108TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
108–457

PENSION FUNDING EQUITY ACT OF 2004

APRIL 1, 2004.—Ordered to be printed

Mr. BOEHNER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3108]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (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 for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

1. SHORT TITLE.

This Act may be cited as the "Pension Funding Equity Act of 2004".

TITLE I—PENSION FUNDING

SEC. 101. TEMPORARY REPLACEMENT OF 30-YEAR TREASURY RATE.

(a) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

(A) IN GENERAL.—Clause (ii) of section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subclause (II) as subclause (III) and by inserting after subclause (I) the following new subclause:

"(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning after December 31, 2003, and before January 1, 2006, 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 rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.".

(B) SECRETARIAL AUTHORITY.—Subclause (III) of section 302(b)(5)(B)(ii) of such Act, as redesignated by subparagraph (A), is amended—

(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".

(C) CONFORMING AMENDMENT.—Subclause (I) of section 302(b)(5)(B)(ii) of such Act is amended by inserting "or (III)" after "subclause (II)".

(2) DETERMINATION OF CURRENT LIABILITY.—Clause (i) of section 302(d)(7)(C) of such Act 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.—Paragraph (7) of section 302(e) of such Act 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 for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II).".

(4) PBGC.—Clause (iii) of section 4006(a)(3)(E) of such Act is amended by adding at the end the following new subclause:

"(V) In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by

the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.".

(b) INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

(A) IN GENERAL.—Clause (ii) of section 412(b)(5)(B) of the Internal Revenue Code of 1986 is amended by redesignating subclause (II) as subclause (III) and by inserting after subclause (I) the following new subclause:

> *"(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning after December 31, 2003, and before January 1, 2006, 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 rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary on the basis of 2 or more indices that are selected periodically by the Secretary and that are in the top 3 quality levels available. The Secretary shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.".*

(B) SECRETARIAL AUTHORITY.—Subclause (III) of section 412(b)(5)(B)(ii) of such Code, as redesignated by subparagraph (A), is amended—

(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".

(C) CONFORMING AMENDMENT.—Subclause (I) of section 412(b)(5)(B)(ii) of such Code is amended by inserting "or (III)" after "subclause (II)".

(2) DETERMINATION OF CURRENT LIABILITY.—Clause (i) of section 412(l)(7)(C) 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.—Paragraph (7) of section 412(m) 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 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)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.".

(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2006.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 2003.

(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 and subsections (l)(9)(B)(ii) and (m)(1) of section 412 of the Internal Revenue Code of 1986 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 prior plan years. The

Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

(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(e)(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 (b)(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. 102. ELECTION OF ALTERNATIVE DEFICIT REDUCTION CONTRIBUTION.

(a) 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) ELECTION FOR CERTAIN PLANS.—

"(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 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 plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

"(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

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, 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 processing of iron ore pellets, 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.

"(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 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."

(b) 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) ELECTION FOR CERTAIN PLANS.—

"(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 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 plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

"(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

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, 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 processing of iron ore pellets, or

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

"(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."

(c) EFFECT OF ELECTION.—An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 or section 412(l)(12) of the Internal Revenue Code of 1986 (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 person" after "101(e)(2) with respect to any person".

SEC. 103. MULTIEMPLOYER PLAN FUNDING NOTICES.

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by inserting after subsection (e) the following new subsection:

"(f) 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, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation.

"(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 notice 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 101(f)".

(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. 104. ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.

(a) 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) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

"(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year se-

lected by the plan from either of the 2 immediately succeeding plan years.

"(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under section 304(a) for multiemployer plans.

"(iii) 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 period for which a charge is deferred pursuant to an election under clause (i), unless—

"(I) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

"(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

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

"(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term 'eligible multiemployer plan' means a multiemployer plan—

"(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

"(II) with respect to which the plan's enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the actuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)(2)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan's net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

"(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTIEMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

"(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 of the Internal Revenue Code of 1986 with respect to the plan,

"(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

"(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1986 with respect to the plan or an extension of an amortization period was granted under section 304 of this Act or section 412(e) of such Code with respect to the plan.

"(vi) NOTICE.—If a plan sponsor makes an election under this subparagraph or 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, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation. Such notice shall include with respect to any election the amount of any charge 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) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as 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) INTERNAL REVENUE CODE OF 1986.—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) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

"(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first

plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

"(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under subsection (d) for multiemployer plans.

"(iii) 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 period for which a charge is deferred pursuant to an election under clause (i), unless—

"(I) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

"(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

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

"(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term 'eligible multiemployer plan' means a multiemployer plan—

"(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

"(II) with respect to which the plan's enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the acutuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan's net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

"(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTIEMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

"(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 with respect to the plan,

"(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

"(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 412(d) or section 303 of the Employee Retirement Income Security Act of 1974 with respect to the plan or an extension of an amortization period was granted under subsection (e) or section 304 of such Act with respect to the plan.

"(vi) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary may prescribe."

TITLE II—OTHER PROVISIONS

SEC. 201. 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 Retire-

ment 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. 202. 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. 203. SENSE OF CONGRESS REGARDING DEFINED BENEFIT PENSION SYSTEM REFORM.

It is the sense of the Congress that the Congress must ensure the financial health of the defined benefit pension system by working to promptly implement—

(1) a permanent replacement for the pension discount rate used for defined benefit pension plan calculations, and

(2) comprehensive funding reforms for all defined benefit pension plans aimed at achieving accurate and sound pension funding to enhance retirement security for workers who rely on defined pension plan benefits, to reduce the volatility of contributions, to provide plan sponsors with predictability for plan contributions, and to ensure adequate disclosures for plan participants in the case of underfunded pension plans.

SEC. 204. 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 Funding Equity Act of 2004".

(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 Funding Equity Act of 2004".

(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 Funding Equity Act of 2004".

SEC. 205. REPEAL OF REDUCTION OF DEDUCTIONS FOR MUTUAL LIFE INSURANCE COMPANIES.

(a) IN GENERAL.—Section 809 of the Internal Revenue Code of 1986 (relating to reductions in certain deduction of mutual life insurance companies) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsections (a)(2)(B) and (b)(1)(B) of section 807 of such Code are each amended by striking "the sum of (i)" and by striking "plus (ii) any excess described in section 809(a)(2) for the taxable year,".

(2)(A) The last sentence of section 807(d)(1) of such Code is amended by striking "section 809(b)(4)(B)" and inserting "paragraph (6)".

(B) Subsection (d) of section 807 of such Code is amended by adding at the end the following new paragraph:

"(6) STATUTORY RESERVES.—The term 'statutory reserves' means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c)."

(3) Subsection (c) of section 808 of such Code is amended to read as follows:

"(c) AMOUNT OF DEDUCTION.—The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year."

(4) Subparagraph (A) of section 812(b)(3) of such Code is amended by striking "sections 808 and 809" and inserting "section 808".

(5) Subsection (c) of section 817 of such Code is amended by striking "(other than section 809)".

(6) Subsection (c) of section 842 of such Code is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 of such Code is amended by striking the item relating to section 809.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 206. 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)(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, or

"(ii) in the case of a mutual insurance company—

"(I) the gross receipts of which for the taxable year do not exceed $150,000, and

"(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).".

(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 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded" before the period at the end.

(c) DEFINITION OF INSURANCE COMPANY FOR SECTION 831.—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)).".

(d) 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".

(e) EFFECTIVE DATE.—

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

(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007.

SEC. 207. CONFIRMATION OF ANTITRUST STATUS OF GRADUATE MEDICAL RESIDENT MATCHING PROGRAMS.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress makes the following findings:

(A) For over 50 years, most United States medical school seniors and the large majority of graduate medical education programs (popularly known as "residency programs") have chosen to use a matching program to match medical students with residency programs to which they have applied. These matching programs have been an integral part of an educational system that has produced the finest physicians and medical researchers in the world.

(B) Before such matching programs were instituted, medical students often felt pressure, at an unreasonably early stage of their medical education, to seek admission to, and accept offers from, residency programs. As a result, medical students often made binding commitments before they were in a position to make an informed decision about a medical specialty or a residency program and before residency programs could make an informed assessment of students' qualifications. This situation was inefficient, chaotic, and unfair and it often led to placements that did not serve the interests of either medical students or residency programs.

(C) The original matching program, now operated by the independent non-profit National Resident Matching Program and popularly known as "the Match," was developed and implemented more than 50 years ago in response to widespread student complaints about the prior process. This Program includes on its board of directors individuals nominated by medical student organizations as well as by major medical education and hospital associations.

(D) The Match uses a computerized mathematical algorithm, as students had recommended, to analyze the preferences of students and residency programs and match students with their highest preferences from among the available positions in residency programs that listed them. Students thus obtain a residency position in the most highly ranked program on their list that has ranked them sufficiently high among its preferences. Each year, about 85 per-

cent of participating United States medical students secure a place in one of their top 3 residency program choices.

(E) Antitrust lawsuits challenging the matching process, regardless of their merit or lack thereof, have the potential to undermine this highly efficient, pro-competitive, and long-standing process. The costs of defending such litigation would divert the scarce resources of our country's teaching hospitals and medical schools from their crucial missions of patient care, physician training, and medical research. In addition, such costs may lead to abandonment of the matching process, which has effectively served the interests of medical students, teaching hospitals, and patients for over half a century.

(2) PURPOSES.—It is the purpose of this section to—

(A) confirm that the antitrust laws do not prohibit sponsoring, conducting, or participating in a graduate medical education residency matching program, or agreeing to do so; and

(B) ensure that those who sponsor, conduct or participate in such matching programs are not subjected to the burden and expense of defending against litigation that challenges such matching programs under the antitrust laws.

(b) APPLICATION OF ANTITRUST LAWS TO GRADUATE MEDICAL EDUCATION RESIDENCY MATCHING PROGRAMS.—

(1) DEFINITIONS.—In this subsection:

(A) ANTITRUST LAWS.—The term "antitrust laws"—

(i) has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(ii) includes any State law similar to the laws referred to in clause (i).

(B) GRADUATE MEDICAL EDUCATION PROGRAM.—The term "graduate medical education program" means—

(i) a residency program for the medical education and training of individuals following graduation from medical school;

(ii) a program, known as a specialty or subspecialty fellowship program, that provides more advanced training; and

(iii) an institution or organization that operates, sponsors or participates in such a program.

(C) GRADUATE MEDICAL EDUCATION RESIDENCY MATCHING PROGRAM.—The term "graduate medical education residency matching program" means a program (such as those conducted by the National Resident Matching Program) that, in connection with the admission of students to graduate medical education programs, uses an algorithm and matching rules to match students in accordance with the preferences of students and the preferences of graduate medical education programs.

(D) STUDENT.—The term "student" means any individual who seeks to be admitted to a graduate medical education program.

(2) CONFIRMATION OF ANTITRUST STATUS.—It shall not be unlawful under the antitrust laws to sponsor, conduct, or participate in a graduate medical education residency matching program, or to agree to sponsor, conduct, or participate in such a program. Evidence of any of the conduct described in the preceding sentence shall not be admissible in Federal court to support any claim or action alleging a violation of the antitrust laws.

(3) APPLICABILITY.—Nothing in this section shall be construed to exempt from the antitrust laws any agreement on the part of 2 or more graduate medical education programs to fix the amount of the stipend or other benefits received by students participating in such programs.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act, shall apply to conduct whether it occurs prior to, on, or after such date of enactment, and shall apply to all judicial and administrative actions or other proceedings pending on such date of enactment.

And the Senate agree to the same.

From the Committee on Education and the Workforce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
HOWARD "BUCK" MCKEON,
SAM JOHNSON,
PATRICK J. TIBERI,

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
ROB PORTMAN,

Managers on the Part of the House.

CHUCK GRASSLEY,
JUDD GREGG,
MITCH MCCONNELL,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (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 for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after "**SECTION**" (page 2, line 3) and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

CONTENTS

A. Temporary Replacement of Interest Rate Used for Certain Pension Plan Purposes and Alternative Deficit Reduction Contribution for Certain Plans

(Sec. 3 of the House bill, secs. 2–3 of the Senate amendment, secs. 302 and 4006 of ERISA, and secs. 404, 412 and 415 of the Code)

PRESENT LAW

In general

Under present law, the interest rate on 30-year Treasury securities is used for several purposes related to defined benefit pension plans. Specifically, the interest rate on 30-year Treasury securities is used: (1) in determining current liability for purposes of the funding and deduction rules; (2) in determining unfunded vested benefits for purposes of Pension Benefit Guaranty Corporation ("PBGC") variable rate premiums; and (3) in determining the minimum required value of lump-sum distributions from a defined benefit pension plan and maximum lump-sum values for purposes of the limits on benefits payable under a defined benefit pension plan.

The IRS publishes the interest rate on 30-year Treasury securities on a monthly basis. The Department of the Treasury does not currently issue 30-year Treasury securities. As of March 2002, the IRS publishes the average yield on the 30-year Treasury bond maturing in February 2031 as a substitute.

Funding rules

In general

The Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA") impose minimum funding requirements with respect to defined benefit pension plans.[1] Under the funding rules, the amount of contributions required for a plan year is generally the plan's normal cost for the year (i.e., the cost of benefits allocated to the year under the plan's funding method) plus that year's portion of other liabilities that are amortized over a period of years, such as benefits resulting from a grant of past service credit.

Additional contributions for underfunded plans

Under special funding rules (referred to as the "deficit reduction contribution" rules),[2] an additional contribution to a plan is generally required if the plan's funded current liability percentage is less than 90 percent.[3] A plan's "funded current liability percent-

[1] Code sec. 412; ERISA sec. 302. The Code also imposes limits on deductible contributions, as discussed below.

[2] The deficit reduction contribution rules apply to single-employer plans, other than single-employer plans with no more than 100 participants on any day in the preceding plan year. Single-employer plans with more than 100 but not more than 150 participants are generally subject to lower contribution requirements under these rules.

[3] Under an alternative test, a plan is not subject to the deficit reduction contribution rules for a plan year if (1) the plan's funded current liability percentage for the plan year is at least 80 percent, and (2) the plan's funded current liability percentage was at least 90 percent for

age" is the actuarial value of plan assets[4] as a percentage of the plan's current liability. In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan.

The amount of the additional contribution required under the deficit reduction contribution rules is the sum of two amounts: (1) the excess, if any, of (a) the deficit reduction contribution (as described below), over (b) the contribution required under the normal funding rules; and (2) the amount (if any) required with respect to unpredictable contingent event benefits.[5] The amount of the additional contribution cannot exceed the amount needed to increase the plan's funded current liability percentage to 100 percent.

The deficit reduction contribution is the sum of (1) the "unfunded old liability amount," (2) the "unfunded new liability amount," and (3) the expected increase in current liability due to benefits accruing during the plan year.[6] The "unfunded old liability amount" is the amount needed to amortize certain unfunded liabilities under 1987 and 1994 transition rules. The "unfunded new liability amount" is the applicable percentage of the plan's unfunded new liability. Unfunded new liability generally means the unfunded current liability of the plan (i.e., the amount by which the plan's current liability exceeds the actuarial value of plan assets), but determined without regard to certain liabilities (such as the plan's unfunded old liability and unpredictable contingent event benefits). The applicable percentage is generally 30 percent, but is reduced if the plan's funded current liability percentage. is greater than 60 percent.

Required interest rate and mortality table

Specific interest rate and mortality assumptions must be used in determining a plan's current liability for purposes of the special funding rule. The interest rate used to determine a plan's current liability must be within a permissible range of the weighted average[7] of the interest rates on 30-year Treasury securities for the four-year period ending on the last day before the plan year begins. The permissible range is generally from 90 percent to 105 percent.[8] The interest rate used under the plan must be consistent with the

---

each of the two immediately preceding plan years or each of the second and third immediately preceding plan years.

[4] The actuarial value of plan assets is the value determined under an actuarial valuation method that takes into account fair market value and meets certain other requirements. The use of an actuarial valuation method allows appreciation or depreciation in the market value of plan assets to be recognized gradually over several plan years. Sec. 412(c)(2); Treas. reg. sec. 1.412(c)(2)–1.

[5] A plan may provide for unpredictable contingent event benefits, which are benefits that depend on contingencies that are not reliably and reasonably predictable, such as facility shutdowns or reductions in workforce. An additional contribution is generally not required with respect to unpredictable contingent event benefits unless the event giving rise to the benefits has occurred.

[6] If the Secretary of the Treasury prescribes a new mortality table to be used in determining current liability, as described below, the deficit reduction contribution may include an additional amount.

[7] The weighting used for this purpose is 40 percent, 30 percent, 20 percent and 10 percent, starting with the most recent year in the four-year period. Notice 88–73, 1988–2 C.B. 383.

[8] If the Secretary of the Treasury determines that the lowest permissible interest rate in this range is unreasonably high, the Secretary may prescribe a lower rate, but not less than 80 percent of the weighted average of the 30-year Treasury rate.

assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.[9]

The Job Creation and Worker Assistance Act of 2002 [10] amended the permissible range of the statutory interest rate used in calculating a plan's current liability for purposes of applying the additional contribution requirements. Under this provision, the permissible range is from 90 percent to 120 percent for plan years beginning after December 31, 2001, and before January 1, 2004.

The Secretary of the Treasury is required to prescribe mortality tables and to periodically review (at least every five years) and update such tables to reflect the actuarial experience of pension plans and projected trends in such experience.[11] The Secretary of the Treasury has required the use of the 1983 Group Annuity Mortality Table.[12]

Full funding limitation

No contributions are required under the minimum funding rules in excess of the full funding limitation. In 2004 and thereafter, the full funding limitation is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets.[13] However, the full funding limitation may not be less than the excess, if any, of 90 percent of the plan's current liability (including the current liability normal cost) over the actuarial value of plan assets. In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability under the full funding limitation may be based on projected future benefits, including future salary increases.

Timing of plan contributions

In general, plan contributions required to satisfy the funding rules must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year.

In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year.[14] The amount of each required installment is 25 percent of the lesser of (1) 90 percent of

---

[9] Code sec. 412(b)(5)(B)(iii)(II); ERISA sec. 302(b)(5)(B)(iii)(II). Under Notice 90–11, 1990–1 C.B. 319, the interest rates in the permissible range are deemed to be consistent with the assumptions reflecting the purchase rates that would be used by insurance companies to satisfy the liabilities under the plan.

[10] Pub. L. No. 107–147.

[11] Code sec. 412(1)(7)(C)(ii); ERISA sec. 302(d)(7)(C)(ii).

[12] Rev. Rul. 95–28, 1995–1 C.B. 74. The IRS and the Treasury Department have announced that they are undertaking a review of the applicable mortality table and have requested comments on related issues, such as how mortality trends should be reflected. Notice 2003–62, 2003–38 I.R.B. 576; Announcement 2000–7, 2000–1 C.B. 586.

[13] For plan years beginning before 2004, the full funding limitation was generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) a percentage (170 percent for 2003) of the plan's current liability (including the current liability normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets, but in no case less than the excess, if any, of 90 percent of the plan's current liability over the actuarial value of plan assets. Under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the full funding limitation based on 170 percent of current liability is repealed for plan years beginning in 2004 and thereafter. The provisions of EGTRRA generally do not apply for years beginning after December 31, 2010.

[14] Code sec. 412(m); ERISA sec. 302(e).

the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.[15]

Funding waivers

Within limits, the IRS is permitted to waive all or a portion of the contributions required under the minimum funding standard for a plan year.[16] A waiver may be granted if the employer (or employers) responsible for the contribution could not make the required contribution without temporary substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. Generally, no more than three waivers may be granted within any period of 15 consecutive plan years.

If a funding waiver is in effect for a plan, subject to certain exceptions, no plan amendment may be adopted that 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 vest under the plan. In addition, the IRS is authorized to require security to be granted as a condition of granting a funding waiver if the sum of the plan's accumulated funding deficiency and the balance of any outstanding waived funding deficiencies exceeds $1 million.

Excise tax

An employer is generally subject to an excise tax if it fails to make minimum required contributions and fails to obtain a waiver from the IRS.[17] The excise tax is generally 10 percent of the amount of the funding deficiency. In addition, a tax of 100 percent may be imposed if the funding deficiency is not corrected within a certain period.

Deductions for contributions

Employer contributions to qualified retirement plans are deductible, subject to certain limits. In the case of a defined benefit pension plan, the employer generally may deduct the greater of: (1) the amount necessary to satisfy the minimum funding requirement of the plan for the year; or (2) the amount of the plan's normal cost for the year plus the amount necessary to amortize certain unfunded liabilities over ten years, but limited to the full funding limitation for the year.[18] However, the maximum amount of deductible

---

[15] In connection with the expanded interest rate range available for 2002 and 2003, special rules apply in determining current liability for the preceding plan year for purposes of applying the quarterly contributions requirements to plan years beginning in 2002 (when the expanded range first applies) and 2004 (when the expanded range no longer applies). In each of those years ("present year"), current liability for the preceding year is redetermined, using the permissible range applicable to the present year. This redetermined current liability will be used for purposes of the plan's funded current liability percentage for the preceding year, which may affect the need to make quarterly contributions, and for purposes of determining the amount of any quarterly contributions in the present year, which is based in part on the preceding year.

[16] Code sec. 412(d); ERISA sec. 303.

[17] Code sec. 4971.

[18] Code sec. 404(a)(1).

contributions is generally not less than the plan's unfunded current liability.[19]

PBGC premiums

Because benefits under a defined benefit pension plan may be funded over a period of years, plan assets may not be sufficient to provide the benefits owed under the plan to employees and their beneficiaries if the plan terminates before all benefits are paid. The PBGC generally insures the benefits owed under defined benefit pension plans (up to certain limits) in the event a plan is terminated with insufficient assets. Employers pay premiums to the PBGC for this insurance coverage.

PBGC premiums include a flat-rate premium and, in the case of an underfunded plan, a variable rate premium based on the amount of unfunded vested benefits.[20] In determining the amount of unfunded vested benefits, the interest rate used is 85 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

Under the Job Creation and Worker Assistance Act of 2002, for plan years beginning after December 31, 2001, and before January 1, 2004, the interest rate used in determining the amount of unfunded vested benefits for PBGC variable rate premium purposes is increased to 100 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

Lump-sum distributions

Accrued benefits under a defined benefit pension plan generally must be paid in the form of an annuity for the life of the participant unless the participant consents to a distribution in another form. Defined benefit pension plans generally provide that a participant may choose among other forms of benefit offered under the plan, such as a lump-sum distribution. These optional forms of benefit generally must be actuarially equivalent to the life annuity benefit payable to the participant.

A defined benefit pension plan must specify the actuarial assumptions that will be used in determining optional forms of benefit under the plan in a manner that precludes employer discretion in the assumptions to be used. For example, a plan may specify that a variable interest rate will be used in determining actuarial equivalent forms of benefit, but may not give the employer discretion to choose the interest rate.

Statutory assumptions must be used in determining the minimum value of certain optional forms of benefit, such as a lump sum.[21] That is, the lump sum payable under the plan may not be less than the amount of the lump sum that is actuarially equivalent to the life annuity payable to the participant, determined using the statutory assumptions. The statutory assumptions con-

[19] Code sec. 404(a)(1)(D). In the case of a plan that terminates during the year, the maximum deductible amount is generally not less than the amount needed to make the plan assets sufficient to fund benefit liabilities as defined for purposes of the PBGC termination insurance program (sometimes referred to as "termination liability").

[20] ERISA sec. 4006.

[21] Code sec. 417(e)(3); ERISA sec. 205(g)(3).

sist of an applicable mortality table (as published by the IRS) and an applicable interest rate.

The applicable interest rate is the annual interest rate on 30-year Treasury securities, determined as of the time that is permitted under regulations. The regulations provide various options for determining the interest rate to be used under the plan, such as the period for which the interest rate will remain constant ("stability period") and the use of averaging.

Limits on benefits

Annual benefits payable under a defined benefit pension plan generally may not exceed the lesser of (1) 100 percent of average compensation, or (2) $165,000 (for 2004).[22] The dollar limit generally applies to a benefit payable in the form of a straight life annuity beginning no earlier than age 62. The limit is reduced if benefits are paid before age 62. In addition, if the benefit is not in the form of a straight life annuity, the benefit generally is adjusted to an equivalent straight life annuity. In making these reductions and adjustments, the interest rate used generally must be not less than the greater of (1) five percent; or (2) the interest rate specified in the plan. However, for purposes of adjusting a benefit in a form that is subject to the minimum value rules (including the use of the interest rate on 30-year Treasury securities), such as a lump-sum benefit, the interest rate used must be not less than the greater of: (1) the interest rate on 30-year Treasury securities; or (2) the interest rate specified in the plan.

HOUSE BILL

Interest rate for determining current liability and PBGC premiums

The House bill changes the interest rate used for plan years beginning after December 31, 2003, and before January 1, 2006, in determining current liability for funding and deduction purposes and in determining PBGC variable rate premiums. For these purposes, the House bill replaces the interest rate on 30-year Treasury securities with the rate of interest on amounts conservatively invested in long-term corporate bonds.

For purposes of determining a plan's current liability for plan years beginning after December 31, 2003, and before January 1, 2006, the interest rate used must be within a permissible range of the weighted average of the rates of interest on amounts conservatively invested in long-term corporate bonds during the four-year period ending on the last day before the plan year begins, as determined by the Secretary of the Treasury on the basis of one or more indices selected periodically by the Secretary. The permissible range for these years is from 90 percent to 100 percent. The Secretary of the Treasury is directed to publish the interest rate within the permissible range.

In determining the amount of unfunded vested benefits for PBGC variable rate premium purposes for plan years beginning after December 31, 2003, and before January 1, 2006, the interest rate used is 85 percent of the annual yield on amounts conservatively invested in long-term corporate bonds for the month pre-

[22] Code sec. 415(b).

ceding the month in which the plan year begins, as determined by the Secretary of the Treasury on the basis of one or more indices selected periodically by the Secretary. The Secretary of the Treasury is directed to publish such annual yield.

Interest rate used to apply benefit limits to lump sums

No provision.

Alternative deficit reduction contribution for certain plans

No provision.[23]

Effective date

The House bill is generally effective for plan years beginning after December 31, 2003. For purposes of applying certain rules ("lookback rules") to plan years beginning after December 31, 2003, the amendments made by the provision may be applied as if they had been in effect for all years beginning before the effective date. For purposes of the provision, "lookback rules" means: (1) the rule under which a plan is not subject to the additional funding requirements for a plan year if the plan's funded current liability percentage was at least 90 percent for each of the two immediately preceding plan years or each of the second and third immediately preceding plan years; and (2) the rule under which quarterly contributions are required for a plan year if the plan's funded current liability percentage was less than 100 percent for the preceding plan year.

SENATE AMENDMENT

Interest rate for determining current liability and PBGC premiums

The Senate amendment is the same as the House bill, with the following modifications.

The Senate amendment replaces the interest rate on 30-year Treasury securities with a conservative long-term bond rate reflecting the rates of interest on amounts invested conservatively in long term corporate bonds and based on the use of two or more indices that are in the top two quality levels available reflecting average maturities of 20 years or more. The Secretary of the Treasury is directed to prescribe by regulation a method for periodically determining conservative long-term corporate bond rates.[24]

Under the Senate amendment, an employer may elect to disregard the temporary interest rate change for purposes of determining the maximum amount of deductible contributions to a defined benefit pension plan (regardless of whether the plan is subject to the deficit reduction contribution requirements). In such a case, the present-law interest rate rules apply, i.e., the interest rate used in determining current liability for that purpose must be within the permissible range (90 to 105 percent) of the weighted

[23] Section 2002 of H.R. 3521, the "Tax Relief Extension Act of 2003," as passed by the House of Representatives on November 20, 2003, provides for a reduced deficit reduction contribution for plan years beginning after December 27, 2003, and before December 28, 2005, in the case of plans maintained by commercial passenger airlines. For each year of these years, the reduced contribution is 20 percent of the otherwise required additional contribution.

[24] The Senate amendment also repeals the present-law rule under which, for purposes of applying the quarterly contributions requirements to plan years beginning in 2004, current liability for the preceding year is redetermined.

average of the interest rates on 30-year Treasury securities for the preceding four-year period.

Interest rate used to apply benefit limits to lump sums

Under the Senate amendment, in the case of plan years beginning in 2004 or 2005, in adjusting a form of benefit that is subject to the minimum value rules, such as a lump-sum benefit, for purposes of applying the limits on benefits payable under a defined benefit pension plan, the interest rate used must be not less than the greater of: (1) 5.5 percent; or (2) the interest rate specified in the plan.

Alternative deficit reduction contribution for certain plans

In general

The Senate amendment allows certain employers ("applicable employers") to elect a reduced amount of additional required contribution under the deficit reduction contribution rules (an "alternative deficit reduction contribution") with respect to certain plans for applicable plan years. An applicable plan year is a plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects a reduced contribution. If an employer so elects, the amount of the additional deficit reduction contribution for an applicable plan year is the greater of: (1) 20 percent (40 percent in the case of a plan year beginning after December 27, 2004) of the amount of the additional contribution that would otherwise be required; or (2) the additional contribution that would be required if the deficit reduction contribution for the plan year were determined as the expected increase in current liability due to benefits accruing during the plan year.

An election of an alternative deficit reduction contribution may be made only with respect to a plan that was not subject to the deficit reduction contribution rules for the plan year beginning in 2000. An election may not be made with respect to more than two plan years. An election is to be made at such time and in such manner as the Secretary of the Treasury prescribes. An election does 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 vest under the plan.

An applicable employer is an employer that is: (1) a commercial passenger airline; (2) primarily engaged in the production or manufacture of a steel mill product, or in the mining or processing of iron ore or beneficiated iron ore products; or (3) an organization described in section 501(c)(5) that established the plan for which an alternative deficit reduction contribution is elected on June 30, 1955. In addition, an employer not described in the preceding sentence is treated as an applicable employer if the employer files an application (at such time and in such manner as the Secretary of the Treasury prescribes) to be treated as an applicable employer. However, an employer making such an application is not treated as an applicable employer if, within 90 days of the application, the Secretary determines (taking into account the application of the provision) that there is a reasonable likelihood that the employer

will be unable to make required future contributions to the plan in a timely manner.

Restrictions on amendments

Certain plan amendments may not be adopted during an applicable plan year (i.e., a plan year for which an alternative deficit reduction contribution is elected). This restriction applies to an amendment that 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 vest under the plan. The restriction applies unless: (1) the plan's funded current liability percentage as of the end of the applicable plan year is projected to be at least 75 percent (taking into account the effect of the amendment); (2) the amendment provides for an increase in benefits under a formula that is not based on a participant's compensation, but only if the rate of the increase does not exceed the contemporaneous rate of increase in average wages of participants covered by the amendment; (3) the amendment is required by a collective bargaining agreement that is in effect on the date of enactment of the provision; (4) the amendment is determined by the Secretary of Labor to be reasonable and provides for only de minimis increases in plan liabilities; or (5) the amendment is required as a condition of qualified retirement plan status.

If a plan is amended during an applicable plan year in violation of the provision, an election of an alternative deficit reduction contribution does not apply to any applicable plan year ending on after the date on which the amendment is adopted.

Notice requirement

The Senate amendment amends ERISA to provide that, if an employer elects an alternative deficit reduction contribution for any applicable plan year, the employer must provide written notice of the election to participants and beneficiaries within 30 days of filing the election (120 days in the case of an employer that files an application to be treated as an applicable employer). The notice to participants must include: (1) the due date of the alternative deficit reduction contribution; (2) the amount by which the required contribution to the plan was reduced as a result of the election; (3) a description of the benefits under the plan that are eligible for guarantee by the PBGC; and (4) an explanation of the limitations on the PBGC guarantee and the circumstances in which the limitations apply, including the maximum guaranteed monthly benefits that the PBGC would pay if the plan terminated while underfunded. An employer that fails to provide the required notice to a participant or beneficiary may (in the discretion of a court) be liable to the participant or beneficiary in the amount of up to $100 a day from the date of the failure, and the court may in its discretion order such other relief as it deems proper.

The Senate amendment also amends ERISA to require that an employer electing an alternative deficit reduction contribution for any year must provide written notice of the election to the PBGC within 30 days of the election (120 days in the case of an employer that files an application to be treated as an applicable employer). The notice to the PBGC must include: (1) the due date of the alter-

native deficit reduction contribution; (2) the amount by which the required contribution to the plan was reduced as a result of the election; (3) the number of years it will take to restore the plan to full funding if the employer makes only the required contributions; and (4) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer.

Effective date

Interest rate for determining current liability and PBGC premiums

The Senate amendment is generally effective for plan years beginning after December 31, 2003. For purposes of applying certain rules ("lookback rules") to plan years beginning after December 31, 2003, the amendments made by the provision may be applied as if they had been in effect for all years beginning before the effective date. For purposes of the provision, "lookback rules" means: (1) the rule under which a plan is not subject to the additional funding requirements for a plan year if the plan's funded current liability percentage was at least 90 percent for each of the two immediately preceding plan years or each of the second and third immediately preceding plan years; and (2) the rule under which quarterly contributions are required for a plan year if the plan's funded current liability percentage was less than 100 percent for the preceding plan year.

Interest rate used to apply benefit limits to lump sums

The Senate amendment is generally effective for plan years beginning after December 31, 2003. Under a special rule, in the case of a distribution made to a participant or beneficiary after December 31, 2003, and before January 1, 2005, in a form of benefit that is subject to the minimum value rules, such as a lump-sum benefit, and that is subject to adjustment in applying the limit on benefits payable under a defined benefit pension plan, the amount payable may not, solely by reason of the Senate amendment, be less than the amount that would have been payable if the amount payable had been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 31, 2004.

Alternative deficit reduction contribution for certain plans

The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

Interest rate for determining current liability and PBGC premiums

The conference agreement follows the House bill with modifications.

Under the conference agreement, the interest rate used for plan years beginning after December 31, 2003, and before January 1, 2006, in determining current liability for funding and deduction purposes and in determining PBGC variable rate premiums is gen-

erally the rate of interest on amounts invested conservatively in long-term investment-grade corporate bonds.[25]

For purposes of determining a plan's current liability for plan years beginning after December 31, 2003, and before January 1, 2006, the interest rate used must be within a permissible range of the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the four-year period ending on the last day before the plan year begins. The permissible range for these years is from 90 percent to 100 percent. The interest rate is to be determined by the Secretary of the Treasury on the basis of two or more indices that are selected periodically by the Secretary and are in the top three quality levels available.

The interest rate on long-term corporate bonds shall be calculated pursuant to a method, prescribed by the Secretary of the Treasury, which relies on publicly available indices of high-quality bonds (i.e., the top three quality levels). The Secretary may use bonds with average maturities of 20 years or more in determining the rate. The Secretary of Treasury may prescribe that two thirds of the rate may be based on two or more indices that are in the top three quality levels, and one third of such rate may be based on two or more indices that are in the third quality level. The Secretary shall have discretion to determine which publicly available indices to use.

The Secretary is directed to make the permissible range of the interest rate, as well as the indices and methodology used to determine the average rate, publicly available. The methodology used by the Secretary to arrive at a single rate shall be publicly available (including for a subscription fee or other charge). The Secretary shall publish the rate on a monthly basis, along with an updated four-year weighted average of the rate and an updated permissible range. The Secretary shall consider and monitor the current marketplace indices to produce the specified rate to ensure that the indices continue to be appropriate for this purpose. Through regulations, the Secretary shall, as appropriate, make prospective changes in the indices used to determine the rate.

For purposes of determining the four-year weighted average of interest rates under the temporary provision, the weighting applicable under present law applies (i.e., 40 percent, 30 percent, 20 percent and 10 percent, starting with the most recent year in the four-year period). In addition, consistent with current IRS guidance, the interest rates in the permissible range under the temporary provision are deemed to be consistent with the assumptions reflecting the purchase rates that would be used by insurance companies to satisfy the liabilities under the plan. Thus, any interest rate in the permissible range may be used in determining current liability while the temporary provision is in effect.

The temporary interest rate generally applies in determining current liability for purposes of determining the maximum amount of deductible contributions to a defined benefit pension plan (regardless of whether the plan is subject to the deficit reduction con-

[25] The conference agreement also repeals the present-law rule under which, for purposes of applying the quarterly contributions requirements to plan years beginning in 2004, current liability for the preceding year is redetermined.

tribution requirements). However, under the conference agreement, an employer may elect to disregard the temporary interest rate change for purposes of determining the maximum amount of deductible contributions (regardless of whether the plan is subject to the deficit reduction contribution requirements). In such a case, the present-law interest rate rules apply, i.e., the interest rate used in determining current liability for that purpose must be within the permissible range (90 to 105 percent) of the weighted average of the interest rates on 30-year Treasury securities for the preceding four-year period. This is intended solely as a temporary provision to ensure that, pending long-term reform of the funding and deduction rules, the deduction limit is neither increased nor decreased so that employers are not penalized for fully funding their plans. Because the 30-year Treasury rate is an obsolete rate, its use must be revisited promptly in the context of long-term funding and deduction reform. However, the use of the 30-year Treasury rate for the purposes of determining maximum deduction limits should not be considered precedent for the determination of other pension plan calculations. Furthermore, the use of different interest rates for certain pension plan calculations in the context of this temporary bill should not be considered precedent for the use of different discount rates to measure pension plan liabilities.

Under the conference agreement, in determining the amount of unfunded vested benefits for PBGC variable rate premium purposes for plan years beginning after December 31, 2003, and before January 1, 2006, the interest rate used is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment-grade corporate bonds for the month preceding the month in which the plan year begins (subject to the same requirements applicable to the determination of the interest rate used in determining current liability).

Interest rate used to apply benefit limits to lump sums

The conference agreement follows the Senate amendment.

Under the conference agreement, in the case of plan years beginning in 2004 or 2005, in adjusting a form of benefit that is subject to the minimum value rules, such as a lump-sum benefit, for purposes of applying the limits on benefits payable under a defined benefit pension plan, the interest rate used must be not less than the greater of: (1) 5.5 percent; or (2) the interest rate specified in the plan.

Plan amendments

The conference agreement permits certain plan amendments made pursuant to the interest rate provision of the bill to be retroactively effective. If certain requirements are met, the plan will be treated as being operated in accordance with its terms, and the amendment will not violate the anticutback rules (except as provided by the Secretary of the Treasury).[26] In order for this treatment to apply, the plan amendment must be made on or before the last day of the first plan year beginning on or after January 1,

[26] Code sec. 411(d)(6); ERISA sec. 204(g).

2006. In addition, the amendment must apply retroactively as of the date on which the interest rate provision became effective with respect to the plan and the plan must be operated in compliance with the interest rate provision until the amendment is made.

A plan amendment will not be considered to be pursuant to the interest rate provision of the bill if it has an effective date before the effective date of the interest rate provision. Similarly, relief from the anticutback rules does not apply for periods prior to the effective date of the interest rate provision or the plan amendment.

Alternative deficit reduction contribution for certain plans

In general

The conference agreement follows the Senate amendment with modifications.

The conference agreement allows certain employers ("applicable employers") to elect a reduced amount of additional required contribution under the deficit reduction contribution rules (an "alternative deficit reduction contribution") with respect to certain plans for applicable plan years. An applicable plan year is a plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects a reduced contribution. If an employer so elects, the amount of the additional deficit reduction contribution for an applicable plan year is the greater of: (1) 20 percent of the amount of the additional contribution that would otherwise be required; or (2) the additional contribution that would be required if the deficit reduction contribution for the plan year were determined as the expected increase in current liability due to benefits accruing during the plan year.

An election of an alternative deficit reduction contribution may be made only with respect to a plan that was not subject to the deficit reduction contribution rules for the plan year beginning in 2000.[27] An election may not be made with respect to more than two plan years. An election is to be made at such time and in such manner as the Secretary of the Treasury prescribes. Guidance relating to the time and manner in which an election is made is to be issued expeditiously. An election does 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 vest under the plan.

An applicable employer is an employer that is: (1) a commercial passenger airline; (2) primarily engaged in the production or manufacture of a steel mill product, or the processing of iron ore pellets; or (3) an organization described in section 501(c)(5) that established the plan for which an alternative deficit reduction contribution is elected on June 30, 1955.

[27] Whether a plan was subject to the deficit reduction contribution rules for the plan year beginning in 2000 is determined without regard to the rule that allows the temporary interest rate based on amounts invested conservatively in long-term investment-grade corporate bonds to be used for lookback rule purposes, as discussed below.

Restrictions on amendments

Certain plan amendments may not be adopted during an applicable plan year (i.e., a plan year for which an alternative deficit reduction contribution is elected). This restriction applies to an amendment that 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 vest under the plan. The restriction applies unless: (1) the plan's enrolled actuary certifies (in such form and manner as prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions that will exceed the increase in annual charges to the funding standard account attributable to such amendment; or (2) the amendment is required by a collective bargaining agreement that is in effect on the date of enactment of the provision.

If a plan is amended during an applicable plan year in violation of the provision, an election of an alternative deficit reduction contribution does not apply to any applicable plan year ending on after the date on which the amendment is adopted.

Notice requirement

The conference agreement amends ERISA to provide that, if an employer elects an alternative deficit reduction contribution for any applicable plan year, the employer must provide written notice of the election to participants and beneficiaries and to the PBGC within 30 days of filing the election. The notice to participants and beneficiaries must include: (1) the due date of the alternative deficit reduction contribution; (2) the amount by which the required contribution to the plan was reduced as a result of the election; (3) a description of the benefits under the plan that are eligible for guarantee by the PBGC; and (4) an explanation of the limitations on the PBGC guarantee and the circumstances in which the limitations apply, including the maximum guaranteed monthly benefits that the PBGC would pay if the plan terminated while underfunded. The notice to the PBGC must include: (1) the due date of the alternative deficit reduction contribution; (2) the amount by which the required contribution to the plan was reduced as a result of the election; (3) the number of years it will take to restore the plan to full funding if the employer makes only the required contributions; and (4) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer.

An employer that fails to provide the required notice to a participant, beneficiary, or the PBGC may (in the discretion of a court) be liable to the participant, beneficiary, or PBGC in the amount of up to $100 a day from the date of the failure, and the court may in its discretion order such other relief as it deems proper.

Effective date

Interest rate for determining current liability and PBGC premiums

The conference agreement is generally effective for plan years beginning after December 31, 2003. For purposes of applying certain rules ("lookback rules") to plan years beginning after Decem-

ber 31, 2003, the amendments made by the provision may be applied as if they had been in effect for all years beginning before the effective date. For purposes of the provision, "lookback rules" means: (1) the rule under which a plan is not subject to the additional funding requirements for a plan year if the plan's funded current liability percentage was at least 90 percent for each of the two immediately preceding plan years or each of the second and third immediately preceding plan years; and (2) the rule under which quarterly contributions are required for a plan year if the plan's funded current liability percentage was less than 100 percent for the preceding plan year. The amendments made by the provision may be applied for purposes of the lookback rules, regardless of the funded current liability percentage reported for the plan on the plan's annual reports (i.e., Form 5500) for preceding years.

Interest rate used to apply benefit limits to lump sums

The conference agreement is generally effective for plan years beginning after December 31, 2003. Under a special rule, in the case of a distribution made to a participant or beneficiary after December 31, 2003, and before January 1, 2005, in a form of benefit that is subject to the minimum value rules, such as a lump-sum benefit, and that is subject to adjustment in applying the limit on benefits payable under a defined benefit pension plan, the amount payable may not, solely by reason of the conference agreement, be less than the amount that would have been payable if the amount payable had been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 31, 2004.

Alternative deficit reduction contribution for certain plans

The conference agreement is effective on the date of enactment.

B. Multiemployer Plan Funding Notices

(Sec. 4 of the Senate amendment and secs. 101 and 502 of ERISA)

PRESENT LAW

Under present law, defined benefit plans are generally required to meet certain minimum funding rules. These rules are designed to help ensure that such plans are adequately funded. Both single-employer plans and multiemployer plans are subject to minimum funding requirements; however, the requirements are different for each type of plan.

Similarly, the Pension Benefit Guaranty Corporation ("PBGC") insures certain benefits under both single-employer and multiemployer defined benefit plans, but the rules relating to the guarantee vary for each type of plan. In the case of multiemployer plans, the PBGC guarantees against plan insolvency. Under its multiemployer program, PBGC provides financial assistance through loans to plans that are insolvent (that is, plans that are unable to pay basic PBGC-guaranteed benefits when due).

Employers maintaining single-employer defined benefit plans are required to provide certain notices to plan participants relating

to the funding status of the plan. For example, ERISA requires an employer of a single-employer defined benefit plan to notify plan participants if the employer fails to make required contributions (unless a request for a funding waiver is pending).[28] In addition, in the case of an underfunded plan for which variable rate PBGC premiums are required, the plan administrator generally must notify plan participants of the plan's funding status and the limits on the PBGC benefit guarantee if the plan terminates while underfunded.[29]

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment requires the administrator of a defined benefit plan which is a multiemployer plan to provide an annual funding notice to: (1) each participant and beneficiary; (2) each labor organization representing such participants or beneficiaries; and (3) each employer that has an obligation to contribute under the plan.

Such a notice must include: (1) 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 identification number; (2) a statement as to whether the plan's funded current liability percentage for the plan year to which the notice relates is at least 100 percent (and if not, a statement of the percentage); (3) 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; (4) 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); (5) a general description of the benefits under the plan which are eligible to be guaranteed by the PBGC and the limitations of the guarantee and circumstances in which such limitations apply; and (6) any additional information which the plan administrator elects to include to the extent it is not inconsistent with regulations prescribed by the Secretary of Labor.

The annual funding notice must be provided no later than two months after the deadline (including extensions) for filing the plan's annual report for the plan year to which the notice relates. The funding notice must be provided in a form and manner prescribed in regulations by the Secretary of Labor. Additionally, it must be written so as to be understood by the average plan participant and may be provided in written, electronic, or some other appropriate form to the extent that it is reasonably accessible to persons to whom the notice is required to be provided.

[28] ERISA sec. 101(d).
[29] ERISA sec. 4011. Multiemployer plans are not required to pay variable rate premiums.

The Secretary of Labor is directed to issue regulations (including a model notice) necessary to implement the provision no later than one year after the date of enactment.

Sanction for failure to provide notice

In the case of a failure to provide the annual multiemployer plan funding notice, the Secretary of Labor may assess a civil penalty against a plan administrator of up to $100 per day for each failure to provide a notice. For this purpose, each violation with respect to a single participant or beneficiary is treated as a separate violation.

Effective date

The Senate amendment is effective for plan years beginning after December 31, 2004.

CONFERENCE AGREEMENT

In general

The conference agreement follows the Senate amendment, with the following modification. The administrator of a defined benefit plan which is a multiemployer plan is also required to provide an annual funding notice to the PBGC.

The conference agreement requires the administrator of a defined benefit plan which is a multiemployer plan to provide an annual funding notice to: (1) each participant and beneficiary; (2) each labor organization representing such participants or beneficiaries; (3) each employer that has an obligation to contribute under the plan; and (4) the PBGC.

Such a notice must include: (1) 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 identification number; (2) a statement as to whether the plan's funded current liability percentage for the plan year to which the notice relates is at least 100 percent (and if not, a statement of the percentage); (3) 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; (4) 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); (5) a general description of the benefits under the plan which are eligible to be guaranteed by the PBGC and the limitations of the guarantee and circumstances in which such limitations apply; and (6) any additional information which the plan administrator elects to include to the extent it is not inconsistent with regulations prescribed by the Secretary of Labor.

The annual funding notice must be provided no later than two months after the deadline (including extensions) for filing the plan's annual report for the plan year to which the notice relates. The funding notice must be provided in a form and manner prescribed in regulations by the Secretary of Labor. Additionally, it

must be written so as to be understood by the average plan participant and may be provided in written, electronic, or some other appropriate form to the extent that it is reasonably accessible to persons to whom the notice is required to be provided.

The Secretary of Labor is directed to issue regulations (including a model notice) necessary to implement the provision no later than one year after the date of enactment.

Sanction for failure to provide notice

In the case of a failure to provide the annual multiemployer plan funding notice, the Secretary of Labor may assess a civil penalty against a plan administrator of up to $100 per day for each failure to provide a notice. For this purpose, each violation with respect to a single participant or beneficiary is treated as a separate violation.

Effective date

The conference agreement is effective for plan years beginning after December 31, 2004.

C. Election for Deferral of Charge for Portion of Net Experience Loss of Multiemployer Plans

(Sec. 5 of the Senate amendment, sec. 302(b)(7) of ERISA, and sec. 412(b)(7) of the Code)

PRESENT LAW

General funding requirements

The Code and ERISA impose minimum funding requirements with respect to defined benefit plans.[30] Under the minimum funding rules, the amount of contributions required for a plan year is generally the plan's normal cost for the year (i.e., the cost of benefits allocated to the year under the plan's funding method) plus that year's portion of other liabilities that are amortized over a period of years, such as benefits resulting from a grant of past service credit.[31] A plan's normal cost and other liabilities must be determined under an actuarial cost method permissible under the Code and ERISA.

Funding standard account

As an administrative aid in the application of the funding requirements, a defined benefit plan is required to maintain a special account called a "funding standard account" to which specified charges and credits (including credits for contributions to the plan), plus interest, are made for each plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is generally treated as meeting the minimum funding standard for the year. Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by

[30] Code sec. 412; ERISA sec. 302.

[31] Under special funding rules (referred to as the "deficit reduction contribution" rules), an additional contribution may be required to a single-employer plan if the plan's funded current liability percentage is less than 90 percent. The deficit reduction contribution rules do not apply to multiemployer plans.

which the charges to the account would exceed credits to the account if no contribution were made to the plan. If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an "accumulated funding deficiency."[32]

Experience gains and losses

In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities, such as increases or decreases in asset values. The actuarial assumptions are required to be reasonable and may be subject to other restrictions. If, on the basis of these assumptions, the contributions made to the plan result in actual unfunded liabilities that are less than those anticipated by the actuary, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss.

If a plan has a net experience gain, the funding standard account is credited with the amount needed to amortize the net experience gain over a certain period. If a plan has a net experience loss, the funding standard account is charged with the amount needed to amortize the net experience loss over a certain period. In the case of a multiemployer plan, the amortization period for net experience gains and losses is 15 years.

Funding waivers

Within limits, the IRS is permitted to waive all or a portion of the contributions required under the minimum funding standard for a plan year.[33] A waiver may be granted if the employer (or employers) responsible for the contribution could not make the required contribution without temporary substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. In the case of a multiemployer plan, no more than five waivers may be granted within any period of 15 consecutive plan years.

If a funding waiver is in effect for a plan, subject to certain exceptions, no plan amendment may be adopted that 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 vest under the plan.

Excise tax

An employer is generally subject to an excise tax if it fails to make minimum required contributions and fails to obtain a waiver from the IRS.[34] The excise tax is 10 percent of the amount of the funding deficiency (five percent in the case of a multiemployer

[32] In addition to the funding standard account, a reconciliation account is sometimes used to balance certain items for purposes of reporting actuarial information about the plan on the plan's annual report (Schedule B of Form 5500).

[33] Sec. 412(d).

[34] Sec. 4971.

plan). In addition, a tax of 100 percent may be imposed if the funding deficiency is not corrected within a certain period.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows certain multiemployer plans to elect to defer the beginning of the amortization of certain net experience losses for up to three plan years. The period during which the amortization of a net experience loss is deferred by reason of such an election is referred to as a "hiatus period." The Senate amendment applies to a multiemployer plan that has a net experience loss for any plan year beginning after June 30, 2002, and before July 1, 2006. Such a plan may elect to begin the 15-year amortization period with respect to such a loss in any of the three immediately succeeding plan years as selected by the plan. A plan may elect to delay the beginning of the amortization of net experience losses with respect to net experience losses occurring for only two plan years beginning after June 30, 2002, and before July 1, 2006 (regardless of the number of plan years in that period for which the plan has net experience losses). An election under the Senate amendment is to be made at such time and in such manner as the Secretary of Labor prescribes, after consultation with the Secretary of the Treasury.

If an election is made, the net experience loss is treated, for purposes of determining any charge to the funding standard account (or interest) with respect to the loss, in the same manner as if the net experience loss occurred in the year selected by the plan for the amortization period to begin (without regard to any net experience loss or gain otherwise determined for such year). Interest accrued on any net experience loss during a hiatus period is charged to a reconciliation account and not to the funding standard account.

Certain plan amendments may not take effect for any plan year in the hiatus period. This restriction applies to an amendment that 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 vest under the plan. The restriction applies unless: (1) the plan's funded current liability percentage as of the end of the plan year is projected to be at least 75 percent (taking into account the effect of the amendment); (2) the plan's actuary certifies that, due to an increase in the rates of contributions to the plan, 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 plan hiatus period of the plan; (3) the amendment is determined by the Secretary of Labor to be reasonable and provides for only de minimis increases in plan liabilities; or (4) the amendment is required as a condition of qualified retirement plan status. The restriction on amendments does not apply to an increase in benefits for a group

of participants resulting solely from a collectively bargained increase in the contributions on their behalf. Failure to comply with this restriction is a violation of ERISA and of the qualification requirements of the Code.

If a plan elects to defer the beginning of an amortization period, the plan administrator must provide written notice of the election within 30 days to participants and beneficiaries, to each labor organization representing participants and beneficiaries, and to each employer that has an obligation to contribute under the plan. The notice must include: (1) the amount of the net experience loss to be deferred under the election and the period of the deferral; and (2) the maximum guaranteed monthly benefits that the PBGC would pay if the plan terminated while underfunded. If a plan administrator fails to comply with the notice requirement, the Secretary of Labor may assess a civil penalty of not more than $1,000 a day for each violation.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement allows the plan sponsor of an eligible multiemployer plan to elect to defer certain charges to the funding standard account that would otherwise be made to the plan's funding standard account for a plan year beginning after June 30, 2003, and before July 1, 2005. The charges may be deferred to any plan year selected by the plan sponsor from either of the two plan years immediately succeeding the plan year for which the charge would otherwise be made. An election may be made with respect to up to 80 percent of the charge to the funding standard account attributable to the amortization of a net experience loss for the first plan year beginning after December 31, 2001. An election is to be made at such time and in such manner as the Secretary of the Treasury prescribes. For the plan year to which a charge is deferred under the plan sponsor's election, the funding standard account is required to be charged with interest at the short-term Federal rate on the deferred charge for the period of the deferral.

An eligible multiemployer plan is a multiemployer plan: (1) that, for the first plan year beginning after December 31, 2001, had an actual net investment loss of at least 10 percent of the average fair market value of plan assets during the plan year; and (2) with respect to which the plan's enrolled actuary certifies that (not taking into account the deferral of charges under the provision and based on the actuarial assumptions used for the last plan year before date of enactment of the provision), the plan is projected to have an accumulated funding deficiency for any plan year beginning after June 30, 2003, and before July 1, 2006. In addition, a plan is not treated as an eligible multiemployer plan if: (1) for any taxable year beginning during the ten-year period preceding the first plan year for which an election is made under the provision, any employer required to contribute to the plan failed to timely pay an excise tax imposed on the plan for failure to make required contributions; (2) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under the provision, the average contribution required to be made to the plan

by all employers does not exceed 10 cents per hour, or no employer is required to make contributions to the plan; or (3) with respect to any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under the provision, a funding waiver or extension of an amortization period was granted to the plan.

Certain plan amendments may not be adopted during the period for which a charge is deferred. This restriction applies to an amendment that 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 vest under the plan. The restriction applies unless: (1) the plan's enrolled actuary certifies (in such form and manner as prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions that will exceed the increase in annual charges to the funding standard account attributable to such amendment; or (2) the amendment is required by a collective bargaining agreement that is in effect on the date of enactment of the provision. If a plan is amended in violation of the provision, an election under the provision does not apply to any plan year ending on after the date on which the amendment is adopted.

If a plan sponsor elects to defer charges attributable to a net experience loss, the plan administrator must provide written notice of the election within 30 days to participants and beneficiaries, to each labor organization representing participants and beneficiaries, to each employer that has an obligation to contribute under the plan, and to the PBGC. The notice must include: (1) the amount of the charges to be deferred under the election and the period of the deferral; and (2) the maximum guaranteed monthly benefits that the PBGC would pay if the plan terminated while underfunded. If a plan administrator fails to comply with the notice requirement, the Secretary of Labor may assess a civil penalty of not more than $1,000 a day for each violation.

Effective date.—The conference agreement is effective on the date of enactment.

D. Two-Year Extension of Transition Rule to Pension Funding Requirements for Interstate Bus Company

(Sec. 6 of the Senate amendment, and sec. 769(c) of the Retirement Protection Act of 1994 (as added by sec. 1508 of the Taxpayer Relief Act of 1997))

PRESENT LAW

Under present law, defined benefit plans are required to meet certain minimum funding rules. In some cases, additional contributions are required if a defined benefit plan is underfunded. Additional contributions generally are not required in the case of a plan with a funded current liability percentage of at least 90 percent. A plan's funded current liability percentage is the value of plan assets as a percentage of current liability. In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan. In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, es-

timated contributions for the current plan year must be made in quarterly installments during the current plan year.

The PBGC insures benefits under most single-employer defined benefit plans in the event the plan is terminated with insufficient assets to pay for plan benefits. The PBGC is funded in part by a flat-rate premium per plan participant, and a variable rate premium based on the amount of unfunded vested benefits under the plan. A specified interest rate and a specified mortality table apply in determining unfunded vested benefits for this purpose.

Under present law, a special rule modifies the minimum funding requirements in the case of certain plans. The special rule applies in the case of plans that (1) were not required to pay a variable rate PBGC premium for the plan year beginning in 1996, (2) do not, in plan years beginning after 1995 and before 2009, merge with another plan (other than a plan sponsored by an employer that was a member of the controlled group of the employer in 1996), and (3) are sponsored by a company that is engaged primarily in interurban or interstate passenger bus service.

The special rule treats a plan to which it applies as having a funded current liability percentage of at least 90 percent for plan years beginning after 1996 and before 2005 if for such plan year the funded current liability percentage is at least 85 percent. If the funded current liability of the plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the relief from the minimum funding requirements applies only if certain specified contributions are made.

For plan years beginning after 2004 and before 2010, the funded current liability percentage will be deemed to be at least 90 percent if the actual funded current liability percentage is at least at certain specified levels. The relief from the minimum funding requirements applies for a plan year beginning in 2005, 2006, 2007, or 2008 only if contributions to the plan for the plan year equal at least the expected increase in current liability due to benefits accruing during the plan year.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the special funding rules for plans sponsored by a company engaged primarily in interurban or interstate passenger bus service by providing that, for plan years beginning in 2004 and 2005, the funded current liability percentage of the plan will be treated as at least 90 percent for purposes of determining the amount of required contributions (100 percent for purposes of determining whether quarterly contributions are required). As a result, for these years, additional contributions and quarterly contributions are not required with respect to the plan. In addition, for these years, the mortality table used under the plan is used in determining the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums.

Effective date.—The Senate amendment is effective for plan years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

The conference agreement modifies the special funding rules for plans sponsored by a company engaged primarily in interurban or interstate passenger bus service by providing that, for plan years beginning in 2004 and 2005, the funded current liability percentage of the plan will be treated as at least 90 percent for purposes of determining the amount of required contributions (100 percent for purposes of determining whether quarterly contributions are required). As a result, for these years, additional contributions and quarterly contributions are not required with respect to the plan. In addition, for these years, the mortality table used under the plan is used in determining the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums.

Effective date.—The Senate amendment is effective for plan years beginning after December 31, 2003.

E. Procedures Applicable to Disputes Involving Pension Plan Withdrawal Liability

(Sec. 7 of the Senate amendment and sec. 4221 of ERISA)

PRESENT LAW

Under ERISA, when an employer withdraws from a multiemployer plan, the employer is generally liable for its share of unfunded vested benefits, determined as of the date of withdrawal (generally referred to as the "withdrawal liability"). Whether and when a withdrawal has occurred and the amount of the withdrawal liability is determined by the plan sponsor. The plan sponsor's assessment of withdrawal liability is presumed correct unless the employer shows by a preponderance of the evidence that the plan sponsor's determination of withdrawal liability was unreasonable or clearly erroneous. A similar standard applies in the event the amount of the plan's unfunded vested benefits is challenged.

The first payment of withdrawal liability determined by the plan sponsor is due no later than 60 days after demand, even if the employer contests the determination of liability. Disputes between an employer and plan sponsor concerning withdrawal liability are resolved through arbitration, which can be initiated by either party. Even if the employer contests the determination, payments of withdrawal liability must be made by the employer until the arbitrator issues a final decision with respect to the determination submitted for arbitration.

For purposes of withdrawal liability, all trades or businesses under common control are treated as a single employer. In addition, the plan sponsor may disregard a transaction in order to assess withdrawal liability if the sponsor determines that the principal purpose of the transaction was to avoid or evade withdrawal liability. For example, if a subsidiary of a parent company is sold and the subsidiary then withdraws from a multiemployer plan, the plan sponsor may assess withdrawal liability as if the subsidiary were still part of the parent company's controlled group if the spon-

sor determines that a principal purpose of the sale of the subsidiary was to evade or avoid withdrawal liability.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, a special rule may apply if a transaction is disregarded by a plan sponsor in determining that a withdrawal has occurred or that an employer is liable for withdrawal liability. If the transaction that is disregarded by the plan sponsor occurred before January 1, 1999, and at least five years before the date of the withdrawal, then (1) the determination by the plan sponsor that a principal purpose of the transaction was to evade or avoid withdrawal liability is not presumed to be correct, (2) the plan sponsor, rather than the employer, has the burden to establish, by a preponderance of the evidence, the elements of the claim that a principal purpose of the transaction was to evade or avoid withdrawal liability, and (3) if an employer contests the plan sponsor's determination through an arbitration proceeding, or through a claim brought in a court of competent jurisdiction, the employer is not obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination. The provision does not modify the burden of establishing other elements of a claim for withdrawal liability other than whether the purpose of the transaction was to evade or avoid withdrawal liability.

Effective date.—The provision applies to an employer that receives a notification of withdrawal liability and demand for payment under ERISA section 4219(b)(1) after October 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Under the conference agreement, a special rule may apply if a transaction is disregarded by a plan sponsor in determining that a withdrawal has occurred or that an employer is liable for withdrawal liability. If the transaction that is disregarded by the plan sponsor occurred before January 1, 1999, and at least five years before the date of the withdrawal, then (1) the determination by the plan sponsor that a principal purpose of the transaction was to evade or avoid withdrawal liability is not presumed to be correct, (2) the plan sponsor, rather than the employer, has the burden to establish, by a preponderance of the evidence, the elements of the claim that a principal purpose of the transaction was to evade or avoid withdrawal liability, and (3) if an employer contests the plan sponsor's determination through an arbitration proceeding, or through a claim brought in a court of competent jurisdiction, the employer is not obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination. The provision does not modify the burden of establishing other elements of a claim for withdrawal liability other than whether the purpose of the transaction was to evade or avoid withdrawal liability.

Effective date.—The provision applies to an employer that receives a notification of withdrawal liability and demand for payment under ERISA section 4219(b)(1) after October 31, 2003.

F. Modify Qualification Rules for Tax-Exempt Property and Casualty Insurance Companies

(Sec. 10 of the Senate amendment and secs. 501 and 831 of the Code)

PRESENT LAW

A property and casualty insurance company generally is subject to tax on its taxable income (sec. 831(a)). The taxable income of a property and casualty insurance company is determined as the sum of its underwriting income and investment income (as well as gains and other income items), reduced by allowable deductions (sec. 832).

A property and casualty insurance company is eligible to be exempt from Federal income tax if its net written premiums or direct written premiums (whichever is greater) for the taxable year do not exceed $350,000 (sec. 501(c)(15)).

A property and casualty insurance company may elect to be taxed only on taxable investment income if its net written premiums or direct written premiums (whichever is greater) for the taxable year exceed $350,000, but do not exceed $1.2 million (sec. 831(b)).

For purposes of determining the amount of a company's net written premiums or direct written premiums under these rules, premiums received by all members of a controlled group of corporations of which the company is a part are taken into account. For this purpose, a more-than-50-percent threshhold applies under the vote and value requirements with respect to stock ownership for determining a controlled group, and rules treating a life insurance company as part of a separate controlled group or as an excluded member of a group do not apply (secs. 501(c)(15), 831(b)(2)(B) and 1563).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the requirements for a property and casualty insurance company to be eligible for tax-exempt status, and to elect to be taxed only on taxable investment income.

Under the Senate amendment, a property and casualty insurance company is eligible to be exempt from Federal income tax if (a) its gross receipts for the taxable year do not exceed $600,000, and (b) the premiums received for the taxable year are greater than 50 percent of its gross receipts. For purposes of determining gross receipts, the gross receipts of all members of a controlled group of corporations of which the company is a part are taken into account. The Senate amendment expands the present-law controlled group rule so that it also takes into account gross receipts of foreign and tax-exempt corporations.

A company that does not meet the definition of an insurance company is not eligible to be exempt from Federal income tax under the Senate amendment. For this purpose, the term "insurance company" means any company, more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies (sec. 816(a) and new sec. 831(c)). A company whose investment activities outweigh its insurance activities is not considered to be an insurance company for this purpose.[35] It is intended that IRS enforcement activities address the misuse of present-law section 501(c)(15).

The Senate amendment also provides that a property and casualty insurance company may elect to be taxed only on taxable investment income if its net written premiums or direct written premiums (whichever is greater) do not exceed $1.2 million (without regard to whether such premiums exceed $350,000) (sec. 831(b)). As under present law, for purposes of determining the amount of a company's net written premiums or direct written premiums under this rule, premiums received by all members of a controlled group of corporations (as defined in section 831(b)) of which the company is a part are taken into account.

It is intended that regulations or other Treasury guidance provide for anti-abuse rules so as to prevent improper use of the provision, including, for example, by attempts to characterize as premiums any income that is other than premium income.

Effective date.—The Senate amendment provisions are effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with modifications.

Under the conference agreement, an additional special rule provides that a mutual property and casualty insurance company is eligible to be exempt from Federal income tax under the provision if (a) its gross receipts for the taxable year do not exceed $150,000, and (b) the premiums received for the taxable year are greater than 35 percent of its gross receipts, provided certain requirements are met. The requirements are that no employee of the company or member of the employee's family is an employee of another company that is exempt from tax under section 501(c)(15). The limitation to mutual companies and the limitation on employees are intended to address the conferees' concern about the inappropriate use of tax-exempt insurance companies to shelter investment income, including in the case of companies with gross receipts under $150,000. For example, it is intended that the provision not permit the use of small companies with common owners or employees to shelter investment income for the benefit of such owners or employees.

Effective date.—The provision generally is effective for taxable years beginning after December 31, 2003.

---

[35] See, e.g., *Inter-American Life Insurance Co.* v. *Comm'r,* 56 T.C. 497, aff'd per curiam, 469 F.2d 697 (9th Cir. 1972).

Under the conference agreement, a special transition rule applies with respect to certain companies. This transition rule applies in the case of a company that, (1) for its taxable year that includes April 1, 2004, meets the requirements of present law section 501(c)(15)(A) (as in effect for the taxable year beginning before January 1, 2004), and (2) on April 1, 2004, is in a receivership, liquidation or similar proceeding under the supervision of a State court. Under the transition rule, in the case of such a company, the general rule of the provision in the conference agreement applies to taxable years beginning after the earlier of (1) the date the proceeding ends, or (2) December 31, 2007.

For such a company, present-law limitations on the carryover of net operating losses to or from years in which the company was not subject to tax (including section 831(b)(3)) continue to apply. A company that is not otherwise eligible for tax-exempt status under present-law section 501(c)(15) (e.g., a company that is or becomes a life insurance company, or a company with net (or, if greater, direct) written premiums exceeding $350,000 for the taxable year) is not eligible for the transition rule.

G. Definition of Insurance Company for Property and Casualty Insurance Company Tax Rules

(Sec. 11 of the Senate amendment and sec. 831 of the Code)

PRESENT LAW

Present law provides specific rules for taxation of the life insurance company taxable income of a life insurance company (sec. 801), and for taxation of the taxable income of an insurance company other than a life insurance company (sec. 831) (generally referred to as a property and casualty insurance company). For Federal income tax purposes, a life insurance company means an insurance company that is engaged in the business of issuing life insurance and annuity contracts, or noncancellable health and accident insurance contracts, and that meets a 50-percent test with respect to its reserves (sec. 816(a)). This statutory provision applicable to life insurance companies explicitly defines the term "insurance company" to mean any company, more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies (sec. 816(a)).

The life insurance company statutory definition of an insurance company does not explicitly apply to property and casualty insurance companies, although a long-standing Treasury regulation [36] that is applied to property and casualty companies provides

[36] The Treasury regulation provides that "the term 'insurance company' means a company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code." Treas. Reg. sec. 1.801–3(a)(1).

a somewhat similar definition of an "insurance company" based on the company's "primary and predominant business activity."[37]

When enacting the statutory definition of an insurance company in 1984, Congress stated, "[b]y requiring [that] more than half rather than the 'primary and predominant business activity' be insurance activity, the bill adopts a stricter and more precise standard for a company to be taxed as a life insurance company than does the general regulatory definition of an insurance company applicable for both life and nonlife insurance companies . . . Whether more than half of the business activity is related to the issuing of insurance or annuity contracts will depend on the facts and circumstances and factors to be considered will include the relative distribution of the number of employees assigned to, the amount of space allocated to, and the net income derived from, the various business activities."[38]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, for purposes of determining whether a company is a property and casualty insurance company, the term "insurance company" is defined to mean any company, more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, the Senate amendment conforms the definition of an insurance company for purposes of the rules taxing property and casualty insurance companies to the rules taxing life insurance companies, so that the definition is uniform. The Senate amendment adopts a stricter and more precise standard than the "primary and predominant business activity" test contained in Treasury Regulations. A company whose investment activities outweigh its insurance activities is not considered to be an insurance company under the Senate amendment.[39] It is not intended that a company whose sole activ-

---

[37] Court cases involving a determination of whether a company is an insurance company for Federal tax purposes have examined all of the business and other activities of the company. In considering whether a company is an insurance company for such purposes, courts have considered, among other factors, the amount and source of income received by the company from its different activities. See *Bowers* v. *Lawyers Mortgage Co.,* 285 U.S. 182 (1932); *United States* v. *Home Title Insurance Co.,* 285 U.S. 191 (1932). See also *Inter-American Life Insurance Co.* v. *Comm'r,* 56 T.C. 497, aff'd per curiam, 469 F.2d 697 (9th Cir. 1972), in which the court concluded that the company was not an insurance company: "The . . . financial data clearly indicates that petitioner's primary and predominant source of income was from its investments and not from issuing insurance contracts or reinsuring risks underwritten by insurance companies. During each of the years in issue, petitioner's investment income far exceeded its premiums and the amounts of earned premiums were de minimis during those years. It is equally as clear that petitioner's primary and predominant efforts were not expended in issuing insurance contracts or in reinsurance. Of the relatively few policies directly written by petitioner, nearly all were issued to [family members]. Also, Investment Life, in which [family members] each owned a substantial stock interest, was the source of nearly all of the policies reinsured by petitioner. These facts, coupled with the fact that petitioner did not maintain an active sales staff soliciting or selling insurance policies . . ., indicate a lack of concentrated effort on petitioner's behalf toward its chartered purpose of engaging in the insurance business. . . . For the above reasons, we hold that during the years in issue, petitioner was not 'an insurance company . . . engaged in the business of issuing life insurance' and hence, that petitioner was not a life insurance company within the meaning of section 801." 56 T.C. 497, 507–508.

[38] H.R. Rep. 98–432, part 2, at 1402–1403 (1984); S. Prt. No. 98–169, vol. I, at 525–526 (1984); see also H.R. Rep. No. 98–861 at 1043–1044 (1985) (Conference Report).

[39] See *Inter-American Life Insurance Co.* v. *Comm'r, supra.*

ity is the run-off of risks under the company's insurance contracts be treated as a company other than an insurance company, even if the company has little or no premium income.

Effective date.—The Senate amendment provision applies to taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—The Senate amendment provision applies to taxable years beginning after December 31, 2003.

H. Repeal of Reduction of Deductions for Mutual Life Insurance Companies

(Sec. 809 of the Code)

PRIOR AND PRESENT LAW

In general, a corporation may not deduct amounts distributed to shareholders with respect to the corporation's stock. The Deficit Reduction Act of 1984 added a provision to the rules governing insurance companies that was intended to remedy the failure of prior law to distinguish between amounts returned by mutual life insurance companies to policyholders as customers, and amounts distributed to them as owners of the mutual company.

Under the provision, section 809, a mutual life insurance company is required to reduce its deduction for policyholder dividends by the company's differential earnings amount. If the company's differential earnings amount exceeds the amount of its deductible policyholder dividends, the company is required to reduce its deduction for changes in its reserves by the excess of its differential earnings amount over the amount of its deductible policyholder dividends. The differential earnings amount is the product of the differential earnings rate and the average equity base of a mutual life insurance company.

The differential earnings rate is based on the difference between the average earnings rate of the 50 largest stock life insurance companies and the earnings rate of all mutual life insurance companies. The mutual earnings rate applied under the provision is the rate for the second calendar year preceding the calendar year in which the taxable year begins. Under present law, the differential earnings rate cannot be a negative number.

A company's equity base equals the sum of: (1) Its surplus and capital increased by 50 percent of the amount of any provision for policyholder dividends payable in the following taxable year; (2) the amount of its nonadmitted financial assets; (3) the excess of its statutory reserves over its tax reserves; and (4) the amount of any mandatory security valuation reserves, deficiency reserves, and voluntary reserves. A company's average equity base is the average of the company's equity base at the end of the taxable year and its equity base at the end of the preceding taxable year.

A recomputation or "true-up" in the succeeding year is required if the differential earnings amount for the taxable year either exceeds, or is less than, the recomputed differential earnings amount. The recomputed differential earnings amount is calculated

taking into account the average mutual earnings rate for the calendar year (rather than the second preceding calendar year, as above). The amount of the true-up for any taxable year is added to, or deducted from, the mutual company's income for the succeeding taxable year.

For taxable years beginning in 2001, 2002, or 2003, the differential earnings amount is treated as zero for purposes of computing both the differential earnings amount and the recomputed differential earnings amount (true-up).

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement repeals the rule requiring reduction in certain deductions of a mutual life insurance company (section 809).

Effective date.—The provision is effective for taxable years beginning after December 31, 2004. Thus, for taxable years beginning in 2003, the differential earnings amount is treated as zero under present law; for taxable years beginning in 2004, this rule does not apply and section 809 is in effect (including the true-up applicable with respect to taxable years beginning in 2004).

I. Sense of Congress Regarding Defined Benefit Pension System Reform

(Sec. 2 of the House bill and sec. 8 of the Senate amendment)

PRESENT LAW

No provision.

HOUSE BILL

The House bill makes various findings and expresses the sense of the Congress with respect to the interest rate used to value pension plan liabilities.

Specifically, the House bill provides that the Congress finds the following:

The defined benefit pension system has recently experienced severe difficulties due to an unprecedented economic climate of low interest rates, market losses and an increased number of retirees;

The discontinuance of the issuance of 30-year Treasury securities has made the interest rate on such securities an inappropriate and inaccurate benchmark for measuring pension liabilities;

Using the current 30-year Treasury bond interest rate has artificially inflated pension liabilities and adversely affected employers offering defined benefit pension plans and working families who rely on the safe and secure benefits these plans provide;

There is consensus among pension experts that an interest rate based on long-term, conservative corporate bonds would provide a more accurate benchmark for measuring pension plan liabilities; and

A temporary replacement for the 30-year Treasury bond interest rate should be enacted while the Congress evaluates permanent and comprehensive funding reforms.

In addition, the House bill provides that it is the sense of the Congress that the Congress must ensure the financial health of the defined benefit pension system by working to promptly implement: (1) a permanent replacement for the discount rate used for defined benefit pension plan calculations; and (2) comprehensive funding reforms aimed at achieving accurate and sound pension plan funding to enhance retirement security for workers who rely on defined benefit pension plan benefits, to reduce the volatility of contributions, to provide plan sponsors with predictability for plan contributions, and to ensure adequate disclosures for plan participants in the case of underfunded plans.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment makes various findings of the Congress relating to the private pension system and the Pension Benefit Guaranty Corporation ("PBGC") and expresses the sense of the Senate with respect to future legislative action.

Specifically, the Senate amendment provides that the Congress makes the following findings:

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

The 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;

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.

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.

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.

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

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.

The Senate is concerned about the current funding status of the private pension system, both single and multiemployer plans.

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

In addition, the Senate amendment provides that 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 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.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with modifications. Under the conference agreement, it is the sense of the Congress that the Congress must ensure the financial health of the defined benefit pension system by working to promptly implement: (1) a permanent replacement for the discount rate used for defined benefit pension plan calculations; and (2) comprehensive funding reforms for all defined benefit pension plans aimed at achieving accurate and sound pension plan funding to enhance retirement security for workers who rely on defined benefit pension plan benefits, to reduce the volatility of contributions, to provide plan sponsors with predictability for plan contributions, and to ensure adequate disclosures for plan participants in the case of underfunded plans.

Effective date.—The conference agreement is effective on the date of enactment.

J. Extension of Provision Permitting Qualified Transfers of Excess Pension Assets to Retiree Health Accounts

(Sec. 9 of the Senate amendment, sec. 420 of the Code, and secs. 101, 403, and 408 of ERISA)

PRESENT LAW

Defined benefit plan assets generally may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities. In addition, a reversion may occur only if the plan so provides. A reversion prior to plan termination may constitute a

prohibited transaction and may result in plan disqualification. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate is 20 percent if the employer maintains a replacement plan or makes certain benefit increases in connection with the termination; if not, the excise tax rate is 50 percent. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested.

A pension plan may provide medical benefits to retired employees through a separate account that is part of such plan. A qualified transfer of excess assets of a defined benefit plan to such a separate account within the plan may be made in order to fund retiree health benefits.[40] A qualified transfer does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. Thus, transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions. No more than one qualified transfer may be made in any taxable year. A qualified transfer can be made only from a single-employer plan.

Excess assets generally means the excess, if any, of the value of the plan's assets[41] over the greater of (1) the accrued liability under the plan (including normal cost) or (2) 125 percent of the plan's current liability.[42] In addition, excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer will pay out of such account during the taxable year of the transfer for qualified current retiree health liabilities. No deduction is allowed to the employer for (1) a qualified transfer or (2) the payment of qualified current retiree health liabilities out of transferred funds (and any income thereon).

Transferred assets (and any income thereon) must be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Transferred amounts generally must benefit pension plan participants, other than key employees, who are entitled upon retirement to receive retiree medical benefits through the separate account. Retiree health benefits of key employees may not be paid out of transferred assets.

Amounts not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned to the general assets of the plan. These amounts are not includible in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

In order for the transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer (or in the case of a participant who separated in the one-year period

---

[40] Sec. 420.

[41] The value of plan assets for this purpose is the lesser of fair market value or actuarial value.

[42] In the case of plan years beginning before January 1, 2004, excess assets generally means the excess, if any, of the value of the plan's assets over the greater of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 170 percent of the plan's current liability (for 2003), or (2) 125 percent of the plan's current liability. The current liability full funding limit was repealed for years beginning after 2003. Under the general sunset provision of EGTRRA, the limit is reinstated for years after 2010.

ending on the date of the transfer, immediately before the separation).

In order for a transfer to be qualified, the employer generally must maintain retiree health benefits at the same level for the taxable year of the transfer and the following four years.

In addition, the ERISA provides that, at least 60 days before the date of a qualified transfer, the employer must notify the Secretary of Labor, the Secretary of the Treasury, employee representatives, and the plan administrator of the transfer, and the plan administrator must notify each plan participant and beneficiary of the transfer.[43]

No qualified transfer may be made after December 31, 2005.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows qualified transfers of excess defined benefit plan assets through December 31, 2013.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conference agreement allows qualified transfers of excess defined benefit plan assets through December 31, 2013.

Effective date.—The provision is effective on the date of enactment.

K. Confirmation of Antitrust Status of Graduate Medical Resident Matching Programs

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement confirms that the antitrust laws do not prohibit the sponsorship, conduct, or participation in a graduate medical education residency matching program and that evidence of that conduct shall not be admissible to support any claim or action alleging a violation of the antitrust laws.

Effective date.—The provision is effective on the date of enactment. It applies to conduct whether it occurs prior to, on, or after such date and applies to all judicial and administrative actions or other proceedings pending on such date.

[43] ERISA sec. 101(e). ERISA also provides that a qualified transfer is not a prohibited transaction under ERISA or a prohibited reversion.

L. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

ESTIMATED REVENUE EFFECTS OF THE TAX AND PENSION PROVISIONS IN THE CONFERENCE AGREEMENT ON H.R. 3108, THE "PENSION FUNDING EQUITY ACT OF 2004" [1]

Fiscal Years 2004 - 2013

[Millions of Dollars]

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
1. Temporary replacement of interest rate used for purposes of pension funding and PBGC variable rate premiums for 2004 and 2005; employers may elect whether to use temporary replacement interest rate in applying deduction limits; allow the use of 5.5% for purposes of applying section 415 to lump sums in 2004 and 2005 [2]	pyba 12/31/03	3,299	5,563	1,247	-1,261	-1,004	-2,216	-2,737	-1,888	-1,160	-828	7,845	-985
2. Partially waive deficit reduction contributions for 2 years for plans of certain employers not subject to the deficit reduction contributions rules in 2000; additional required contribution would generally be the greater of: (1) 20 percent of the otherwise applicable additional contribution or (2) the amount of the excess, if any, of (i) the expected increase in current liability due to current year accruals, over (ii) the regular funding contribution for the year; applies to passenger airlines, steel and iron ore pellets industries, and a certain tax-exempt organization (sunset plan years beginning after 12/27/05) [2] [3]	pyba 12/27/03	14	44	32	-46	-72	-47	-31	-33	-28	-20	-29	-187
3. Multiemployer plan funding notices [4]	pyba 12/31/04	*No Revenue Effect*											
4. Provide deferral for up to 2 years of up to 80% of certain charges to funding standard account of eligible multiemployer plans; applies to charges attributable to net experience loss for first plan year beginning after 12/31/01, that would otherwise be made for plan years beginning after 6/30/03, and before 7/1/05	DOE	1	4	3	-5	-4	[5]	[5]	[5]	[5]	[5]	-1	-1
5. 2-year extension of transition rule to pension funding requirements	pyba 12/31/03	2	6	2	-3	-2	-2	-2	-1	-1	[6]	5	-1
6. Procedures applicable to disputes involving pension plan withdrawal liability [7]	[8]	*Negligible Revenue Effect*											
7. Limit 501(c)(15) to organizations with gross receipts of $600,000 and premiums at least 50% of gross receipts; and to mutual insurance companies with gross receipts less than $150,000 and premium income at least 35% of gross receipts; and modify definition of insurance company. Transition relief for insurance companies in receivership or liquidation on April 1, 2004, limited to lesser of four years or time spent in receivership	tyba 12/31/03	47	105	118	120	127	134	137	141	146	152	517	1,228
8. Repeal of section 809 related to the reduction in policyholder dividends	tyba 12/31/04	---	-25	-33	-43	-47	-43	-38	-39	-39	-39	-148	-347

Provision	Effective	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004-08	2004-13
9. Sense of Congress	DOE	*No Revenue Effect*											
10. Allow employers to transfer excess defined benefit plan assets to a special account for health benefits of retirees (sunset 12/31/13)	DOE	---	---	18	38	40	40	40	40	40	40	97	298
NET TOTAL		**3,363**	**5,697**	**1,387**	**-1,200**	**-962**	**-2,134**	**-2,631**	**-1,780**	**-1,042**	**-695**	**8,286**	**5**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:
DOE = date of enactment pyba = plan years beginning after tyba = taxable years beginning after

[1] The conference agreement also contains a provision relating to the antitrust status of graduate medical resident matching programs.
[2] Estimate does not include the effects on PBGC variable rate premiums which are the responsibility of the Congressional Budget Office.
[3] Provision includes interaction with item 1.
[4] Provision provides penalty assessable by the Department of Labor for failure to provide notice.
[5] Negligible revenue effect.
[6] Loss of less than 500,000.
[7] Estimate does not include the effects on PBGC which are the responsibility of the Congressional Budget Office.
[8] Provision applies to any employer that receives a notification under Section 4219(b)(1) of ERISA after October 31, 2003.

From the Committee on Education and the Workforce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
HOWARD "BUCK" MCKEON,
SAM JOHNSON,
PATRICK J. TIBERI,

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
ROB PORTMAN,

Managers on the Part of the House.

CHUCK GRASSLEY,
JUDD GREGG,
MITCH MCCONNELL,

Managers on the Part of the Senate.

○