COMPARISON OF THE TAX AND PENSION PROVISIONS OF H.R. 3108, AS PASSED BY THE HOUSE AND THE SENATE

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INTRODUCTION

H.R. 3108, the "Pension Funding Equity Act of 2003," was passed by the House of Representatives on October 8, 2003. On January 28, 2004, the Senate passed an amendment to H.R. 3108, the "Pension Stability Act." (In addition, H.R. 3521, the "Tax Relief Extension Act," as passed by the House on November 20, 2003, contains provisions similar to those in H.R. 3108.) This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a comparison of the tax and pension provisions of H.R. 3108, as passed by the House and the Senate.[2] (References to relevant provisions in H.R. 3521, as passed by the House, are also included.) This document includes a summary comparison of the provisions in the bills and may not reflect all technical differences.

[1] This document may be cited as follows: Joint Committee on Taxation, *Comparison of the Tax and Pension Provisions of H.R. 3108, as passed by the House and the Senate* (JCX-17-04), March 5, 2004.

[2] In addition to the provisions described herein, section 12 of H.R. 3108, as passed by the Senate, repeals section 105 of the Miscellaneous Appropriations and Offsets Act, 2004, i.e., Division H of the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, relating to the use of funds made available under that Act to implement measures to reduce overfishing and promote rebuilding of certain fish stock.

I. COMPARISON OF PROVISIONS

ITEM	PRESENT LAW	HOUSE BILL	SENATE AMENDMENT
A. Findings; Sense of Congress; Sense of the Senate (sec. 2 of the House bill and sec. 8 of the Senate amendment)	No provision.	Makes various findings with respect to interest rates used for pension plan purposes and provides that it is the sense of the Congress that the Congress should work to promptly implement a permanent replacement for the interest rate used for pension purposes and comprehensive pension funding reforms. Effective date.–Date of enactment.	Makes various findings with respect to the private pension system and the PBGC and provides that it is the sense of the Senate that the Senate Committees on Finance and Health, Education, Labor, and Pensions should conduct hearings on the status of multiemployer pension plans and should work to develop permanent measures to strengthen the integrity of the private pension system. Effective date.–Date of enactment.
B. Temporary Replacement of 30-Year Treasury Rate (sec. 3 of the House bill, sec. 2 of the Senate amendment, secs. 404 and 412 of the Code, and secs. 302 and 4006 of ERISA)	The interest rate on 30-year Treasury obligations is used for several purposes related to defined benefit pension plans, including in determining: • current liability for funding and deduction rules, and	For plan years beginning in 2004 and 2005, replaces the 30-year Treasury rate with the rates of interest on amounts conservatively invested in long-term corporate bonds. Such rates are to be determined by the Treasury Secretary based on one or more indices selected periodically by the Secretary.	Same as House bill, except that: • employers may elect to apply present-law rules in determining the maximum deductible amount for contributions to defined benefit pension plans; and

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	• unfunded vested benefits for purposes of PBGC variable rate premiums.	Effective date.–Generally, years beginning after December 31, 2003. (H.R. 3521 as passed by the House includes a similar provision, which replaces the 30-year Treasury rate with the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds.)	• the Treasury Secretary is to determine long-term corporate bond rates based on two or more indices that are in the top two quality levels available reflecting average maturities of 20 years or more. Effective date.–Generally, plan years beginning after December 31, 2003.
C. Interest Rate Used in Applying the Section 415 Limits to Benefits Subject to the Minimum Value Rules (sec. 2(a)(4) of the Senate amendment and sec. 415 of the Code)	The interest rate on 30-year Treasury obligations must be used in determining the minimum value of certain optional forms of benefit payable under a defined benefit pension plan, such as a lump sum. In addition, limits apply to the amount of benefits payable under a defined benefit pension plan. In applying the limits to benefits subject to the minimum value rule, the interest rate must generally be not less than the greater of: (1) the 30-year Treasury rate, and (2) the plan rate.	No provision.	For plan years beginning in 2004 and 2005, in applying the limits on benefits payable under defined benefit pension plans to benefits subject to the minimum value rules, the interest rate must generally be not less than the greater of: (1) 5.5 percent, and (2) the plan rate. Under a transition rule for participants receiving distributions in 2004, the provision does not reduce the amount of benefits payable below the amount determined using the rate in effect as of the last day of the last plan year beginning before 2004.

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			Effective date.–Generally, plan years beginning after December 31, 2003.
D. Election of Alternative Deficit Reduction Contribution (sec. 3 of the Senate amendment, sec. 412(l) of the Code, and sec. 302(d) of ERISA)	Minimum funding requirements apply to defined benefit pension plans. In the case of a single-employer plan, an additional contribution (referred to as the "deficit reduction contribution") is generally required if a plan's funded current liability percentage is less than 90 percent.	No provision. (However, H.R. 3521 as passed by the House 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, the reduced contribution is 20 percent of the otherwise required additional contribution.)	An employer may elect a reduced deficit reduction contribution for two plan years beginning after December 27, 2003, and before December 28, 2005, if: (1) a deficit reduction contribution was not required for 2000; and (2) the employer is a commercial passenger airline, primarily engaged in the production or manufacture of a steel mill product, or the mining or processing of iron ore, or an organization described in section 501(c)(5) of the Internal Revenue Code and which established the plan in question on June 30, 1955. Other employers may apply to the Treasury Secretary for the same relief; the Treasury Secretary may deny relief if, within 90 days, he determines that there is a reasonable likelihood that the employer will be unable to make future required contributions in a timely manner.

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			The reduced deficit reduction contribution for plan years to which the provision applies is the greater of: (1) 20 percent (40 percent in years beginning after December 27, 2004) of the otherwise required additional contribution, and (2) the amount by which the expected increase in current liability due to benefits accruing during the plan year exceeds the contribution required under the regular minimum funding rules. No plan amendments increasing benefits can be adopted during a year to which the funding relief applies, unless the amendment: (1) does not reduce the plan's projected funded current liability for the year below 75 percent; (2) increases benefits under a formula not based on compensation at a rate not exceeding a contemporaneous increase in wages; (3) is required by a collective bargaining agreement in effect

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			on the date of enactment; (4) is determined by the Secretary of Labor to be reasonable and provides for only de minimis increases in plan liabilities; or (5) is required as a condition of qualified retirement plan status. If the funding relief applies, plan participants and beneficiaries must be provided with notice that includes: (1) the due date of the reduced contribution; (2) the amount of the reduction; (3) a description of benefits eligible for guarantee by the PBGC; and (4) an explanation of the limits on the PBGC benefit guarantee. The PBGC must be provided with notice that includes: (1) the due date of the reduced contribution; (2) the amount of the reduction; (3) the number of years to be needed to restore the plan to full funding; and (4) information comparing the amount by which the plan is underfunded with the capitalization of the employer.

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			An election of the funding relief for a plan does not invalidate obligations under a collective bargaining agreement. Effective date.–Date of enactment.
E. Multiemployer Plan Funding Notices (sec. 4 of the Senate amendment and secs. 104(d) and 502 of ERISA)	Administrators of single-employer defined benefit pension plans generally are required to provide participants and beneficiaries with certain information about the funded status of the plan, including: (1) information about the plan's funded current liability percentage; and (2) a statement of the plan's assets and liabilities aggregated by categories and valued at their current value. These requirements do not apply to multiemployer plans.	No provision.	Requires administrators of defined benefit pension plans which are multiemployer plans to provide an annual funding notice to each participant and beneficiary, each labor organization representing such participants and beneficiaries, and each employer which is obligated to contribute under the plan. The notice must include: (1) certain identifying information about the plan; (2) information about the plan's funded current liability 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; (4) a summary of the

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			rules governing insolvent multiemployer plans; (5) information about the PGBC guarantee of benefits under the plan; 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 notice must be provided no later than two months after the deadline for filing the plan's annual report. The plan administrator is subject to a civil penalty of up to $100 per day for each failure to provide notice. <u>Effective date</u>.–Plan years beginning after December 31, 2004.

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F. Amortization Hiatus for Net Experience Losses in Multiemployer Plans (sec. 5 of the Senate amendment, sec. 412(b)(7) of the Code, and sec. 302(b)(7) of ERISA)	The amount of required contributions to a plan is determined on the basis of credits and charges to the plan's funding standard account. If a multiemployer plan has a net experience loss for a plan year, the plan's funding standard account is charged with the amount needed to amortize the net experience loss over 15 years.	No provision.	A multiemployer plan may elect to suspend for up to three years (the "hiatus period") the start of the 15-year amortization period of net experience losses occurring for two plan years (as elected by the plan) beginning after June 30, 2002, and before July 1, 2006. If a plan elects to suspend the amortization period with respect to a net experience loss, the loss is treated as occurring in the year the amortization period begins for purposes of determining any charge to the funding standard account or interest (so no interest on the net experience loss for the hiatus period is charged to the funding standard account or accrued to the amortization base). No plan amendments increasing benefits can take effect during the hiatus period unless: (1) the plan's projected funded current liability for the

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			year is at least 75 percent, (taking into account the amendment); (2) the plan's actuary certifies that the benefit increase will be fully funded within certain periods; (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. If the amortization relief applies, plan participants and beneficiaries and labor organizations representing such participants and beneficiaries must be provided with notice that includes: (1) the amount of the net experience loss to be deferred and the period of deferral; and (2) the maximum guaranteed benefits payable by the PBGC if the plan terminates while underfunded. Effective date.–Date of enactment.

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G. 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 section 1508 of the Taxpayer Relief Act of 1997))	Minimum funding requirements apply to defined benefit pension plans. In the case of a single-employer plan, an additional contribution (referred to as the "deficit reduction contribution") is generally required if a plan's funded current liability percentage is less than 90 percent. Quarterly contributions are required for a plan year if a plan's funded current liability percentage for the preceding plan year is less than 100 percent. For 1996-2008, special deficit reduction contribution rules apply in the case of a plan that is maintained by a company engaged primarily in interurban or interstate passenger bus service and meets certain requirements. The plan's funded current liability percentage is deemed to be at least 90 percent (so no deficit reduction contribution is required) if the plan's actual funded current liability	No provision.	For plan years beginning in 2004 and 2005, in the case of a plan maintained by a company engaged primarily in interurban or interstate passenger bus service-- • the plan's funded current liability percentage is deemed to be at least 90 percent for deficit reduction contribution purposes (so no deficit reduction contribution is required); • the plan's funded current liability percentage is deemed to be at least 100 percent for quarterly contributions purposes (so quarterly contributions are not required); and • the plan's mortality table is used in determining the amount of unfunded vested benefits for PBGC variable rate premium purposes.

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	percentage is at least at certain specified levels or if certain specified contributions are made, or both.		Effective date.–Plan years beginning after December 31, 2003.
H. Procedures Applicable to Disputes Involving Multiemployer Plan Withdrawal Liability (sec. 7 of the Senate amendment and sec. 4221 of ERISA)	An employer that withdraws from a multiemployer plan is generally liable for its share of unfunded vested benefits ("withdrawal liability") as determined by the plan sponsor. The plan sponsor's assessment of withdrawal liability is presumed to be correct unless the employer shows by a preponderance of the evidence that the plan sponsor's determination was unreasonable or clearly erroneous. 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 determination of liability. Disputes between an employer and plan sponsor concerning withdrawal liability are generally resolved through arbitration. A plan sponsor may disregard a transaction in	No provision.	Applies a special rule if a transaction, which occurred before January 1, 1999, and at least five years before the date of withdrawal, is disregarded by a plan sponsor in determining withdrawal liability. In such case: (1) the determination by the plan sponsor that the transaction was to evade or avoid withdrawal liability is not presumed to be correct; (2) the plan sponsor has the burden to establish that a principal purpose of the transaction was to evade or avoid withdrawal liability; and (3) the employer is not obligated to make withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination. Effective date.–Employers that receive a notification of

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	order to assess withdrawal liability if the sponsor determines that a principal purpose of the transaction was to avoid or evade withdrawal liability.		withdrawal liability after October 31, 2003.
I. Extension of 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)	Qualified transfers of excess assets of a defined benefit pension plan to a separate account within the plan providing medical benefits to retired employees may be made before December 31, 2005, to fund retiree health benefits.	No provision.	Allows qualified transfers of excess defined benefit pension plan assets though December 31, 2013. Effective date.–Date of enactment.
J. Modification of Exemption from Tax for Small Property and Casualty Insurance Companies (sec. 10 of the Senate amendment and secs. 501(c)(15) and 831(b) of the Code)	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. 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	No provision.	A property and casualty insurance company is eligible to be exempt from Federal income tax if (1) its gross receipts for the taxable year do not exceed $600,000, and (2) the premiums received for the taxable year are greater than 50 percent of its gross receipts. 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

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	exceed $1.2 million.		million (without regard to whether such premiums exceed $350,000). Effective date.–Taxable years beginning after December 31, 2003.
K. Definition of Insurance Company for Section 831 (sec. 11 of the Senate amendment and sec. 831(c) of the Code)	Statutory rules for determining life insurance company taxable income 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. A Treasury regulation that is applied to property and casualty companies provides a somewhat similar definition of an "insurance company" based on the company's "primary and predominant business activity."	No provision.	The definition of an insurance company for purposes of determining whether a company is a property and casualty insurance company is conformed to the statutory rules for life insurance companies (i.e., more than half of the business of the company during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies). Effective date.–Taxable years beginning after December 31, 2003.