told members of the South Dakota Guard and Army Reserve were not equipped with the most effective body armor that should be standard issue. Soldiers from other States have suffered similar supply shortcomings.

We attempted to address this issue in the supplemental appropriations and the regular 2004 Defense appropriations bill with an extra $420 million specifically to ensure that every soldier facing fire had the best body armor money can buy.

The DOD promised us the problem would be solved by the beginning of December. As it became clear they would miss this deadline, we were then told it would be solved this January. However, today, 10 months after the start of the conflict in Iraq, we continue to hear reports that Guard and Reserve personnel, as well as others, lack top-of-the-line body armor and other vital equipment.

In a few days, another 800 South Dakota Guard soldiers will be sent to Iraq to begin a year-long deployment. They have volunteered to face danger on our behalf. We owe them and the families they leave behind every effort to protect them from harm. Our obligation to stand by Guard members and Reservists cannot and should not end once they return home.

Increasingly, Guard members are facing the same bullets as full-time soldiers. We owe them the same commitment to their health and well-being. That means giving them access to the same health care that full-time soldiers currently enjoy.

Recent studies indicate now one-fifth of National Guard and Reserve members lack health care when they come home. Last year, thanks in part to a bipartisan coalition of Senators, we established a 1-year program to provide a significant number of our Reservists and their families access to TRICARE, the military health care system, when they are not on duty. Today, that same bipartisan coalition will introduce legislation to make that coverage permanent.

Our bill would improve the readiness of our force and enhance the ability of the military to recruit and retain a new generation of soldiers. This legislation is important because these troops are performing a greater share of the fighting than at any other time in decades.

By May, 40 percent of the more than 100,000 U.S. troops in Iraq will be Guard members or Reservists. Yet as we depend more heavily on their service, we are receiving troubling signs of discontent and instability.

A recent internal survey showed the rate of those Reservists who decide not to reenlist could double in just a few years. Just last week, LTG James R. Helmly, head of the Army Reserves, said:

> This is the first extended-duration war our Nation has fought with an all-volunteer force. We must be sensitive to that, and we must apply proactive, preventive measures to prevent a recruiting-retention crisis.

Unless this recruiting/retention crisis is addressed, those losses could severely undermine unit readiness and erode America's national security.

Over the weekend, America lost another hero in Iraq with the death of SGT Kenneth Hendrickson. His death serves to remind us of the service and sacrifice of our men and women in uniform and what they do for their country. Their commitment to us is beyond question. It is time we demonstrated real commitment to them and their families as well.

Our Guard and Reserve members have not failed us. We must not fail them. We must support our troops, not really with words but with action.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. DASCHLE. I will be happy to yield for a question.

JUDICIAL NOMINATIONS

Mr. REID. I see on the announcement of the schedule for this afternoon that there is an agreement that we will vote on another Federal judge. It is my understanding this will be the 170th judge we have approved in the Senate, and with President Bush having given an interim appointment for 1 year to Judge Pickering, the numbers are now 170 approved by the Senate during the term of President Bush and only 4 who have not gotten approval.

Does the Senator agree that those are the numbers?

Mr. DASCHLE. Mr. President, the Senator from Nevada, the distinguish assistant Democratic leader, is right. That record exceeds the record of any predecessor in this period of time. Obviously, the Bush administration has 1 year left before the end of its term. So there is little doubt that they will probably continue to set records with regard to the confirmation of judges.

I might add, this is a time when the Democrats were, at least for a period of time, actually in the majority. They have had good cooperation. The four who have not been confirmed have not been confirmed for good reason. Again, we will address the issue of greater numbers and more cooperation this afternoon, as the Senator suggests, with the confirmation of yet another judge.

Mr. REID. If the Senator will yield for one final question, for those out there who are saying we are turning down President Bush's judicial nominations, the facts are that we have approved 170 who are now or shortly will be sitting as judges in the Federal system—they have been approved by the Senate—and we have turned down 4. The number then is 170 approved, 4 turned down. Those are pretty good numbers; does the Senator agree?

Mr. DASCHLE. The Senator is correct. That would be a pretty remarkable record if this were the sports world, the business world, or the academic world. I was just reminded that 100 of the 170 who were confirmed were confirmed under a Democratic-controlled Senate. So I think we can look back with great satisfaction.

I know there are some who argue we have not been tough enough, we have not been aggressive enough. But I think, as we have said on many occasions, where we agree with the President, we will support him. Where we disagree, we have no recourse but to continue to raise these reservations and objections, especially with regard to lifetime appointments to the Federal bench. I thank the Senator from Nevada for raising the issue.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

PENSION FUNDING EQUITY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3108, which the clerk will report.

The assistant legislative clerk read as follows:

> A 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 other provisions, and for other purposes.

Pending:

> Grassley amendment No. 2233, of a perfecting nature.
>
> Kyl amendment No. 2236 (to amendment No. 2233), to restrict an employer that elected an alternative deficit reduction contribution from applying for a funding waiver.

The PRESIDING OFFICER. Under the previous order, prior to a vote in relationship to amendment No. 2236, there will be 30 minutes equally divided between the chairman and ranking member or their designees, with the initial 10 minutes under the control of the Senator from Arizona, Mr. KYL.

The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I yield myself 5 minutes of the manager's time on this bill.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. COLEMAN. I thank the Chair.

Mr. President, Minnesota is home to Northwest Airlines as well as Ispat Inland Steel Mining Company. I rise today in support of the pension legislation before us and to urge my fellow colleagues to vote for this bill today.

Let me be clear. This legislation is about protecting American workers and their pension benefits. We are discussing this today because of the long arm of September 11 that continues to swipe through the economic landscape and affect the hard-working people of this country.

On January 1, 2000, airline workers' pension plans were over 100 percent funded and business was good for their companies. This, of course, changed dramatically in the days following September 11, and the economy is now beginning to show signs of life again.

The airline industry, because of its cyclical nature, always reacts strongly to the economy. This, coupled with the rise in costs because of new security measures, a dropoff in passengers, and Eisenhower administration interest rates, has made it difficult, if not impossible, for airlines to keep their pensions fully funded.

With regard to steel, Ispat Inland Mining Company is a key component of one of the largest operating integrated steel manufacturers in the Nation and a highly productive mine in my State. Ispat Inland Mining Company and its parent company employ close to 7,000 people who have had the benefit of a defined pension plan since 1936. While funding of this plan has often exceeded 100 percent of the total obligations, funding levels have never fallen below 90 percent of the obligation until 2003. I think all my colleagues are aware of the impact that the economy and foreign imports have had on the steel industry in the last couple of years.

The problem for these companies is the deficit reduction contribution, DRC, which requires companies to close the underfunded gap on an accelerated basis. This results in materially higher pension contributions during periods of economic decline. So what sounds like tough medicine turns out to be poison—poison—for the airline and steel workers. A major risk is that the accelerated deficit reduction contributions could force the airlines and steel companies to seek chapter 11 protection, force them into bankruptcy. Companies, such as Northwest, that are coming back could be forced into bankruptcy by this required accelerated payment.

Unfortunately, I think many understand that in chapter 11 bankruptcy the most likely outcome is the termination of pension plans and the transfer of unfunded liabilities to the PBGC. In effect, we would be destroying the very pension plans that Congress is seeking to preserve.

We must take immediate action to ensure that pension plan termination is a phrase that never enters the corporate boardroom. People who have invested their lives in a company should not have to live in fear that they will be left out in the cold when they retire.

This legislation represents a commonsense approach to help solve the problem. We are providing temporary 2-year relief from some of the cashflow requirements of the DRC, and during this period it is important to understand that companies are still going to make their normal required pension contributions. Pension benefits being accrued by active workers will continue to be funded during this temporary period and lessen any potential risk to the PBGC. I reiterate that the relief is for a portion of the deficit reduction contribution payment, not the regular pension payment. Pension payments are going to be made.

I am also extremely pleased that my amendment to include iron ore in the definition of steel was included in the managers' amendment. Minnesota is the largest producer of iron ore and taconite in the United States. These products are essential for integrated steel companies. Advances in technology have found a use for a lower grade iron ore called taconite. Taconite is crushed, processed into hard, marble-size pellets, and shipped to steel mills. The taconite pellets are melted in blast furnaces and then blown with oxygen to make steel. As a result, a healthy steel industry means a more viable taconite industry and more jobs for this economy.

The AFL–CIO, the Airline Pilots Association, and the International Association of Machine and Aerospace Workers support this legislation.

With this bill, we are not letting businesses off the hook but we are taking the appropriate steps to provide retirement security for constituents across this Nation.

Again, I urge my colleagues to support this bipartisan legislation that will help restore long-term health to American businesses and protect the retirement money for millions of American workers.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to comment about an amendment which I have offered on behalf of U.S. Airways. It is an amendment which provides that the pension plan would be reinstated. It had been required to fund it within a 5-year period. The amendment would allow up to 30 years. It would actually save the Pension Benefit Guaranty Corporation money.

The complexity had arisen as to whether this amendment was relevant. As the CONGRESSIONAL RECORD will show, I spoke about the amendment on Monday explaining what the amendment sought to do and detailing the history as to what had happened with a bill offered by Senator SANTORUM and myself last January 9, and in the hearing of the subcommittee which I chair on January 14.

I had a series of conversations with the Parliamentarian as to whether the amendment was relevant. I sought unanimous consent on Monday to set aside the pending second-degree amendment and an objection was raised. Then a little after 4 yesterday afternoon, I consulted with the Parliamentarian, who had not yet reached a decision, and suggested that my staffer confer with the Deputy Parliamentarian, which was done yesterday afternoon.

I was surprised to find a unanimous consent agreement entered into which precluded the amendment. I have a call in to the chairman of the Finance Committee, Senator GRASSLEY. If possible, I ask if he would come to the floor so we can discuss this matter. The issue was also presented to Senator KENNEDY. If possible, I ask that he come to the floor. We are operating under a very tight time constraint with the agreement now calling for a vote on the pending amendment by about 11:40, and then votes sequencing to final passage.

As a matter of basic fairness, I think we are entitled to have a vote. I am not unaware of the fact that there will be a later pension bill, but this matter is of great importance to my constituents. The U.S. Airways pilots, under the revised plan, sought to have their pensions reduced to about 25 percent when it was not possible to reinstate the earlier plan with an extension of up to 30 years. I think they are entitled to a vote, and we will be back on this matter if we are not able to get a vote today.

When the Parliamentarian is under active consideration and the Senator from Pennsylvania, myself, is pursuing the matter, it seems to me as a matter of basic fairness we ought not to be foreclosed. So I intend to go to the Finance Committee now to talk to Senator GRASSLEY to see if we can get a resolution by the Finance Committee, but that is the essence of the situation.

To repeat, I think we are entitled to a vote. For the record, I know Senator REID is prepared to object, but I ask unanimous consent that I be permitted to offer this amendment with a 10-minute time agreement which will not delay the final passage of the bill.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. REID. Reserving the right to object, we have objections from the majority and minority now on the Finance Committee and also from the majority on the HELP Committee. So based upon that, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. SPECTER. I understand the reasons of the Senator from Nevada. As I said, I am going to be on my way to the Finance Committee to see if I can get a change of decision by the Finance Committee so we can offer this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2263

Mr. SPECTER. Mr. President, there have been a series of discussions, and we have worked out an accommodation to permit me to introduce the amendment on behalf of US Airways pilots. We will handle the vote on a division vote so that there is at least a semblance of what has occurred.

At this point, I ask unanimous consent I be permitted to call up amendment No. 2263 and that there be a division vote and I be permitted to speak under this unanimous consent request for up to 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2263.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for the restoration of certain plans terminating in 2003)

At the appropriate place, insert:

SEC. ____. RESTORATION OF CERTAIN PLANS TERMINATING IN 2003.

(a) IN GENERAL.—The provisions of subsection (b) shall apply to any defined benefit plan that was—

(1) maintained by a commercial passenger air carrier,

(2) maintained for the benefit of such carrier's employees pursuant to a collective bargaining agreement, and

(3) terminated during the calendar year 2003.

(b) RESTORATION OF PLAN.—The Pension Benefit Guaranty Corporation shall restore any plan described in subsection (a), pursuant to the terms described in subsection (g), and the control of the plan's assets and liabilities shall be transferred to the employer. The date of restoration shall be not later than 60 days after the date the terms of the plan are determined pursuant to subsection (g).

(c) EXCLUSION OF EXPECTED INCREASE IN CURRENT LIABILITY.—In applying section 412(l)(1)(A)(i) of the Internal Revenue Code of 1986 and section 302(d)(1)(A)(i) of the Employee Retirement Income Security Act of 1974 with respect to a plan restored under subsection (b), any expected increase in current liability due to benefits accruing during each plan year as described in section 412(l)(2)(C) of such Code and section 302(d)(2)(C) of such Act shall be excluded.

(d) AMORTIZATION OF UNFUNDED AMOUNTS UNDER RESTORATION PAYMENT SCHEDULE.—

(1) POST-RESTORATION INITIAL UNFUNDED ACCRUED LIABILITY.—In the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the initial restoration amortization base for a plan described in subsection (a) shall be an amount equal to the excess of—

(i) the accrued benefit liabilities returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the initial restoration amortization base shall be amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date, and the funding standard account of the plan under section 412 of such Code and section 302 of such Act shall be charged with such installments.

(2) UNFUNDED SECTION 412(l) RESTORATION LIABILITY.—For purposes of section 412 of such Code and section 302 of such Act, in the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the unfunded section 412(l) restoration liability shall be an amount equal to the excess of—

(i) the current liability returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the unfunded section 412(l) restoration liability amount shall be equal to the unfunded section 412(l) restoration liability amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date.

(3) RULES OF SPECIAL APPLICATION.—In applying the 30-year amortization described in paragraph (1)(C) or (2)(C)—

(A) the assumed interest rate for purposes of paragraph (1)(C) shall be the valuation interest rate used to determine the accrued liability under section 412(c) of such Code and section 302(c) of such Act,

(B) the assumed interest rate for purposes of paragraph (2)(C) shall be the interest rate used to determine current liability as of the initial post-restoration valuation date under section 412(l) of such Code and section 302(d) of such Act,

(C) the actuarial value of assets as of the initial post-restoration valuation date shall be reset to the market value of assets with a 5-year phase-in of unexpected investment gains or losses on a prospective basis, and

(D) for plans using the frozen initial liability (FIL) funding method in accordance with section 412(c) of such Code and section 302(c) of such Act, the initial unfunded liability used to determine normal cost shall be reset to the initial restoration amortization base.

(e) QUARTERLY CONTRIBUTIONS.—The requirements of section 412(m) of such Code and section 302(e) of such Act shall not apply to a plan restored under subsection (b) until the plan year beginning on the initial post-restoration valuation date. The required annual payment for that year shall be the lesser of—

(1) the amount determined under section 412(m)(4)(B)(i) of such Code and section 302(e)(4)(B)(i) of such Act, or

(2) 100 percent of the amount required to be contributed under the plan for the plan year beginning January 1, 2003, and ending on the date of plan termination.

(f) RESETTING OF FUNDING STANDARD ACCOUNT BALANCES.—In the case of a plan restored under subsection (b), any accumulated funding deficiency or credit balance in the funding standard account under section 412 of such Code or section 302 of such Act shall be set equal to zero as of the initial post-restoration valuation date.

(g) TERMS OF RESTORED PLAN.—

(1) IN GENERAL.—The terms of a plan which is restored pursuant to subsection (b) shall be determined by mutual agreement of the employer and the collective bargaining representative of employees covered by the plan. If such parties are unable to reach mutual agreement on such terms, then the terms of the restored plan will be determined by a neutral arbitrator. The neutral arbitrator will be selected by the parties within 7 days after the earlier of the date the parties reach an impasse or 60 days after the date of the enactment of this Act. The neutral arbitrator will be selected by the parties from a panel of neutrals provided by the National Mediation Board. The neutral arbitrator will render his or her determination not later than 120 days after the date of the enactment of this Act. Such determination shall be final and binding on the parties.

(2) SPECIFIC TERMS.—The terms of the restored plan are subject to the following:

(A) Benefits under the restored plan for any participant or group of participants may not be greater than, but may be less than, those under the plan prior to its termination, and forms of distribution under the restored plan for any participant or group of participants may exclude forms available under the plan prior to its termination, and any such reductions in benefits or forms of distribution shall be deemed to comply with section 411(d)(6) of such Code and section 204(g) of such Act.

(B) For any participant, benefits under the restored plan shall be offset by the value of contributions made on behalf of such participant to any defined contribution pension plan established by the parties in conjunction with the termination of the restored plan.

(C) The amortization periods for the initial restoration amortization base and the unfunded section 412(l) restoration liability shall not exceed 30 years.

(D) The minimum required cost of the restored plan shall not be less than the greater of—

(i) the projected cost of any defined contribution pension plan established in conjunction with the termination of the restored plan, or

(ii) the amount allowed as costs under the employer's original plan of reorganization for all of the employer's retirement plans minus the minimum required cost determined as of the plan restoration date of all of the employer's retirement plans excluding the restored plan.

(h) PBGC LIABILITY LIMITED.—In the case of any plan which is described in subsection (a), which is restored pursuant to subsection (b), and which subsequently terminates with a date of plan termination before the end of the fifth calendar year after the date of restoration, section 4022 of the Employee Retirement Income Security Act of 1974 shall be applied as if the plan had been amended to provide that participants would receive no credit for benefit accrual purposes under the plan for service on and after the first day of the plan year beginning after the date of the enactment of this Act.

(i) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2002.

Mr. SPECTER. Mr. President, this amendment would do justice to the US Airways pilots who have been very unfairly treated by what has happened to the pension with US Airways.

The airline has had great problems, as have all the airlines, following 9/11. They have been in bankruptcy and have been restructuring their operation. There have been tremendous concessions made by employees of US Airways and the pilots pension was abrogated.

On January 9, 2003, Senator SANTORUM and I introduced S. 119, which would have allowed the US Airways pension plan to have up to 30 years to meet its obligations instead of the 5-year period. The requirement of the 5-year period made it impossible for the pension plan to be continued. My Subcommittee on Labor, Health and Human Services and Education held a hearing on January 14, 2003, and explored the options.

The PBGC declined to honor the request of the US Airways pilots. We have now offered an amendment, which is now pending, which would grant up to 30 years for the pension plan to be funded. We call for a reinstatement of the earlier plan. In the interim, US Airways has offered an additional benefit and we would agree to an offset of that against the amendment which we are now offering.

How much time do I have remaining?

The PRESIDING OFFICER. Five minutes.

Mr. SPECTER. I reserve the remainder of my time until I hear the arguments in opposition to the amendment.

The PRESIDING OFFICER. Who seeks recognition?

Mr. REID. Is the Senate in a quorum call?

The PRESIDING OFFICER. No.

Mr. REID. I suggest to my friend from Pennsylvania it appears as if there will be no one speaking in opposition of the argument. It has been argued several times before. We should move on. We have people who are calling both cloakrooms because of the prearranged vote 20 minutes ago. They have schedules—some downtown, some up here—and I wonder if the Senator could move forward on his final remarks.

Mr. SPECTER. Mr. President, I offer one additional argument; that is, if the amendment of the Senator from Iowa, Mr. GRASSLEY, had been adopted in a timely way, US Airways would have been able to meet its pension obligations. We intend to revisit this on the pension bill which will be coming up at a later time. I have no illusions about the likelihood of success today.

However, US Airways pilots have been unfairly treated. When the plan was changed, they got about 25 percent on the dollar. When US Airways would have an obligation to fund the plan, but for a 30-year period, it would save money for the Pension Benefit Guaranty Corporation and they would not have to make payments. So it would be a win-win situation at all times.

That concludes my argument. I am ready for the vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The Senator has requested a division vote. All those Senators in favor of the amendment will rise and stand until counted.

All those opposed will rise and stand until counted.

On a division, the amendment was rejected.

Mr. REID. I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2236

Mr. REID. Mr. President, any time we have is yielded back.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

Mr. REID. Mr. President, if the Presiding Officer would yield, we have a unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, as in executive session, I ask unanimous consent that following the vote on passage of the pension rate bill today, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar: calendar No. 425, the nomination of Gary L. Sharpe to be a U.S. District Judge for the Northern District of New York.

I further ask unanimous consent that the Senate proceed to a vote on the confirmation of the nomination; further, that following the vote, the President be immediately notified of the Senate's action, and the Senate then return to legislative session. I further ask consent that there be 4 minutes equally divided between the chairman and ranking member before the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2236

The PRESIDING OFFICER. The question is now on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 2236) was rejected.

Mr. DURBIN. Mr. President, I rise in support of the Grassley-Baucus-Gregg-Kennedy amendment. I commend the Finance and HELP Committees for working together in a bipartisan effort to secure the pensions of almost 45 million workers.

This legislation is vital to preserving defined benefit pension plans, which provide retirees with a monthly benefit that is secured by the Pension Benefit Guaranty Corporation. Nearly 35 million workers and retirees are covered by single employer plans, and an additional 9.7 million are covered by multiemployer plans. In all, one in five workers participates in a defined benefit plan.

Unfortunately, these defined benefit pension plans are facing several challenges due to the following ''perfect storm'' of economic conditions: the downturn in the stock market was the longest since the Great Depression; the 30-year Treasury bond interest rates have been at historically low levels; and the weak economy has made it even more difficult for companies to make payments and pay the excise taxes as currently required by law.

As a result of these circumstances, many pension plans are under-funded, and this legislation would help companies weather this storm. There are three main components of this legislation. The first is a 2-year replacement of the 30-year Treasury bond rate used to calculate employers' contributions to pension plans with a corporate bond rate. The second is partial, temporary relief from deficit reduction contributions. The third is relief for multiemployer plans, which often aid low-wage workers, as well as workers in short-term or seasonal employment.

I support all three of these provisions and would like to speak in particular about the need for deficit reduction contribution relief. This relief would aid companies that had well-funded pension plans as recently as 2000, but, due to the current economic storm, need assistance now. The assistance we are providing is temporary—only for 2 years—and partial. It would allow troubled industries, such as airlines and steel, to regain their financial footing by providing relief of up to 80 percent in 2004 and up to 60 percent in 2005.

I understand that there are concerns regarding liability to the PBGC. If a company we are providing relief to now is forced to terminate its pension later, PBGC would takeover the pension, and the liability would be increased by the amount of DRC relief that the company had received. However, this does not take into consideration that if we do not provide companies with DRC relief now, they may be unable to pay their DRC surcharges and therefore will be more likely to have their pensions involuntarily terminated in the first place.

Furthermore, the DRC provision in the Pension Funding Equity Act would ensure that no plan will lose ground. Companies that receive DRC relief would be required to contribute at least the amount necessary to fund the expected increase in current liability that results from benefits that have accrued during the year.

Finally, I know that several Cabinet Secretaries have expressed their opposition to DRC relief. However, the White House, in its Statement of Administration Policy, also has acknowledged that ''The DRC is part of a flawed system of funding rules that should be reviewed and reformed.'' Although the White House would prefer to address DRC changes in the context of broader pension reform, we must provide aid to these companies and their workers now. For example, United Airlines, based in my home State of Illinois, would benefit from the DRC relief in this legislation, and as a result, the pensions of the almost 130,000 participants in United's pension plans, including over 22,000 participants in Illinois, would be more secure.

Overall, the Grassley-Baucus-Gregg-Kennedy amendment will provide necessary relief for the 45 million workers who participate in our single and multi-employer pension plans. I urge my colleagues to join me in preserving the future of these defined benefit pension plans and supporting this important legislation.

AMENDMENT NO. 2233

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 2233), as amended, was agreed to.

MULTIEMPLOYER RELIEF

Mr. BAUCUS. This amendment provides short-term relief for multiemployer pension plans that are struggling to cope with unprecedented losses on their equity investments in the first few years of this decade. The temporary funding relief would help plans deal with the investment losses they suffered through 2002, by letting them postpone amortization of the portion of those losses that would otherwise be recognized for funding purposes in any two of the plan years beginning after June 30, 2002 and before July 1, 2006.

Mr. GREGG. That is correct. The proposed relief would permit a short-term postponement of the losses that count toward the required funding in any two of the plan years beginning after June 30, 2002 and before July 1, 2006. The relief may be taken for no more than 2 years.

Mr. KENNEDY. Yes. For funding purposes, most multiemployer plans recognize investment losses gradually over a period of years. So, part of a plan's investment losses incurred in 2000, for example, would first be recognized under the funding rules in the 2001 plan year. The portion of those losses that show up in the funding requirements during the relief period would be eligible for the relief.

Mr. GRASSLEY. As this discussion demonstrates, the focus of the relief is on the portion of the loss that would be recognized for any of the plan years for which the relief is available. That is what the language means when it refers to losses ''for the plan year.''

AMENDMENT NO. 2233

Mr. BAUCUS. This amendment specifically addresses the problems faced by the steel and airline industry. However, I also have concerns about other types of companies. Some of these companies should be allowed to access the DRC relief that is in this bill. I believe my colleagues share my concerns, and that is why we have included an application process in this amendment.

Mr. GREGG. That is correct. We have included the application process in this amendment so that other types of companies will also be allowed to access the DRC relief in this bill. This application process should allow other employers to receive relief, just like the steel and airline companies.

Mr. KENNEDY. This application process is a fundamental piece of the amendment. It would not be fair to exclude all other employers from the DRC relief. There are many companies in other industries that really need this relief, and we have provided access though the application process.

Mr. GRASSLEY. We have all agreed on the importance of this piece of the amendment, and we all understand that it is not intended to be window dressing. We expect that Treasury will adhere to the legislative intent in crafting this proposal, and implement the application process in a way that allows other employers to receive real relief, much like the steel and industry industries will receive.

Ms. SNOWE. I share my colleagues' concern, particularly with respect to how this application process would apply to small businesses. It is very important that other companies have access to this relief. The application process must provide a means of bringing relief to small companies.

Mr. JEFFORDS. Mr. President, today, I am pleased to see that the Senate is taking action on the Pension Equity Act of 2003.

As many of my colleagues are aware, the pension discount rate relief initiative, enacted in 2001, expired last month. Passage of H.R. 3108 will provide a resolution to this very serious issue. This bill replaces the outdated 30-year Treasury bill rate with a rate based on a composite of investment grade long-term corporate bonds. Failure to act on this bill will cause the statutory rate that pension plans must use to calculate their assets and liabilities to return to the old 30-year rate. Companies with pension plans will shortly have to begin making large contributions to their plans in the year to come.

An amendment to H.R. 3108 will provide relief from the deficit reduction contribution, DRC, requirements that certain plans are now facing. Under the current pension funding rules, companies that offer defined benefit pension plans are required to make additional contributions to those plans when they are less than 90 percent funded. A pension plan's funding level is determined by comparing the plan's current assets to its promised benefits and then calculated as to whether the two will match up by the time the promised benefits are due.

The recent drop in the stock market, low interest rates, and generous pension benefits agreed to in better times have caused many defined benefit pension plans to fall well beneath the 90 percent threshold. As a result, many companies are being required to make substantial contributions at the time they can least afford them. The Finance Committee reported bill, which I support, included fair DRC relief.

While I support these provisions related to pensions, I am disappointed that this body has not worked to enact further reforms. Two months ago, I, along with Senators SNOWE and HATCH, introduced S. 1912, the Retirement Account Portability Act of 2003. In brief, this bill will make a number of improvements in the retirement savings system to help families preserve retirement assets. It will, for example, enhance the portability of retirement savings by expanding rollover options in traditional IRAs, Roth IRAs, and SIMPLE Plans. The bill also clarifies that when employees are permitted to make after-tax contributions to retirement plans, those after-tax amounts may be rolled over into other retirement plans eligible to receive such rollovers. This clarification will make it easier for workers to move all elements of their 401(k) or 403(b) savings when they change jobs and move between the private sector and the tax-exempt sector.

In addition, the bill builds on defined contribution plan reforms enacted in 2001 by requiring a shortened vesting schedule for employer nonelective contributions, such as profit-sharing contributions, to defined contribution plans. As a result, employer contributions will become employee property more quickly, helping workers to build more meaningful retirement benefits. This new vesting schedule corresponds to rules for 401(k) matching contributions enacted in 2001.

The bill also helps preserve retirement savings by allowing plans to designate default IRAs or annuity contracts to which employee rollovers may be directed. Employers should be more willing to establish default IRA and annuity rollover options as a result, making it easier for employees to keep savings in the retirement system when they change jobs.

For workers who leave a job without claiming their retirement benefits, the bill improves on the automatic rollover provisions enacted in 2001, by allowing certain small distributions from retirement plans to be sent to the Pension Benefit Guaranty Corporation, PBGC, ensuring that participants are ultimately reunited with their earned benefits. The bill also expands the scope of the PBGC's successful Missing Participants Program that matches workers with lost pension benefits.

The Retirement Account Portability Act of 2003 will benefit employees of State and local governments, including teachers, through a number of this bill's technical corrections that will facilitate the purchase of service credits in public pension programs, allowing State and local employees to more easily attain a full pension in the jurisdiction where they conclude their career. The bill also contains provisions that will clarify eligibility rights of certain State and local employees who participate in a section 457 deferred compensation plan.

As this body moves to pass H.R. 3108 today, I thank Senators GRASSLEY and BAUCUS for their hard work on this legislation. I also thank Senators GREGG and KENNEDY for their contributions to this initiative. I look forward to working with my distinguished chairmen and ranking members of the HELP and Finance Committees in moving S. 1912 and other measures that will proactively improve the mechanisms we use for pension and retirement plans.

Mrs. BOXER. Mr. President, we need to ensure that the retirement benefits Americans have been promised are secure. The bipartisan Pension Funding Equity Act of 2003 is a first step toward improving retirement security for Americans, and I support it.

As you know, the legislation will help stabilize the traditional pension plans known as defined benefit plans that cover almost 45 million Americans. These plans are in trouble because historically low interest rates and the last few years of decline in the stock market have combined to leave them underfunded.

To help stabilize these plans, the Pension Funding Equity Act provides temporary contribution relief for both single-employer plans and multi-employer plans. Of the 45 million working Americans participating in defined benefit pension plans, 35 million of them are covered by single-employer plans and 9.7 million are covered by multi-employer plans. Defined benefit plans promise workers a monthly retirement benefit that these 45 million workers are counting on. It would be tragic if these funds went bankrupt—or if employers gave them up.

Of the millions of workers participating in defined benefit pension plans, 40 percent are in construction, 30 percent are in retail and service industries, and 10 percent are in trucking services. These workers are the backbone of our labor force, and the first step toward ensuring their retirement security depends on passage of this legislation.

I urge my colleagues to support the Pension Funding Equity Act of 2003.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER (Ms. MURKOWSKI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 9, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—86

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McConnell
Allen	Domenici	Mikulski
Bayh	Dorgan	Miller
Bennett	Durbin	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Frist	Pryor
Breaux	Graham (FL)	Reed
Brownback	Graham (SC)	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hagel	Santorum
Campbell	Harkin	Sarbanes
Cantwell	Hatch	Schumer
Carper	Hollings	Shelby
Clinton	Hutchison	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lincoln	

NAYS—9

Chafee	Inhofe	Nickles
Ensign	Kyl	Sessions
Fitzgerald	McCain	Thomas

NOT VOTING—5

Baucus	Edwards	Lieberman
Chambliss	Kerry	

The bill (H.R. 3108), as amended, was passed, as follows:

H.R. 3108

Resolved, That the bill from the House of Representatives (H.R. 3108) entitled ''An Act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.'', do pass with the following amendment:

Page 2, line 3, strike out all after ''**SECTION**'' and insert:

1. SHORT TITLE.

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

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

(a) INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

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

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

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

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

''(II) SPECIAL RULE FOR 2004 AND 2005.—In the case of plan years beginning in 2004 or 2005, the term 'permissible range' means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the conservative long-term corporate bond rates during the 4-year period ending on the last day before the beginning of the plan year. The Secretary shall, by regulation, prescribe a method for periodically determining conservative long-term bond rates for purposes of this paragraph. Such rates shall reflect the rates of interest on amounts invested conservatively in long-term corporate bonds and shall be based on the use of 2 or more indices that are in the top 2 quality levels available reflecting average maturities of 20 years or more.''; and

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

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

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

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

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

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

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

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

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

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

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

(1) DETERMINATION OF PERMISSIBLE RANGE.—

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

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

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

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

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

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

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

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

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

''(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used

to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).''.

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

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

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

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

(c) EFFECTIVE DATES.—

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

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

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

SEC. 3. ELECTION OF ALTERNATIVE DEFICIT REDUCTION CONTRIBUTION.

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

''(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000.—

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

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

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

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

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

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

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

''(iv) the amendment is otherwise described in subparagraph (A) or (C) of subsection (f)(2).

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

''(C) APPLICABLE EMPLOYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable employer' means an employer which is—

''(I) a commercial passenger airline,

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

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

''(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF.—

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

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

''(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

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

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

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

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

''(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000.—

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

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

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

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

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

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

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

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

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

''(C) APPLICABLE EMPLOYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable employer' means an employer which is—

''(I) a commercial passenger airline,

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

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

''(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF.—

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

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

''(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

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

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

''(E) NOTICE REQUIREMENTS FOR PLANS ELECTING ALTERNATIVE DEFICIT REDUCTION CONTRIBUTIONS.—

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

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

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

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

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

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

''(II) the number of years it will take to restore the plan to full funding if the employer only makes the required contributions, and

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

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

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

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

SEC. 4. MULTIEMPLOYER PLAN FUNDING NOTICES.

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

''(d) MULTIEMPLOYER DEFINED BENEFIT PLAN FUNDING NOTICES.—

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

''(2) INFORMATION CONTAINED IN NOTICES.—

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

''(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

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

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

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

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

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

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

''(4) FORM AND MANNER.—Any notice under paragraph (1)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(F) AMORTIZATION HIATUS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) by adding at the end the following:

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

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

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

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

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

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

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

''(f) PROCEDURES APPLICABLE TO CERTAIN DISPUTES.—

''(1) IN GENERAL.—If—

''(A) a plan sponsor of a plan determines that—

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

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

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

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

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

''(2) SPECIAL RULES.—

''(A) DETERMINATION.—Notwithstanding subsection (a)(3)—

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

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

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

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

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

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

(a) FINDINGS.—Congress makes the following findings:–

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

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

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

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

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

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

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

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

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

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance and the Committee on Health, Education, Labor and Pensions should conduct hearings on the status of the multiemployer pension plans, and should work in consultation with the Departments of Labor and Treasury on permanent measures to strengthen the integrity of the private pension system in order to protect the benefits of current and future pension plan beneficiaries.

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

(a) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 (relating to expiration) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2013''.

(b) AMENDMENTS OF ERISA.—

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

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

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

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

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

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

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

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

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

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

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) of the Internal Revenue Code of 1986 is amended by inserting '', except that in applying section 1563 for purposes of section

831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded'' before the period at the end.

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

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

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

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

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

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

SEC. 12. FUNDS FOR REBUILDING FISH STOCKS.

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

Mr. LEVIN. I move to reconsider the vote.

Mr. NELSON of Florida. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, before we proceed to the next vote, I do want to make a couple quick comments regarding the schedule.

First, I am very pleased with the bipartisan vote on the passage of the pension bill. I congratulate the managers.

At this point, the regular order would be for the Senate to request a conference with the House to reconcile the differences in the Senate bill and the House bill. I understand from the Democratic leadership that they have an objection to appointing conferees at this time. I hope we can work this out. This is an important piece of legislation that we need to address and clearly need to conference this matter with the House.

Having said that, I will continue to talk with the Democratic leader in an effort to proceed with the regular order on appointing conferees.

For the schedule, the next vote, which will occur shortly, will be the last vote of the week. On Monday, we will proceed to consideration of the highway bill. We will have a vote on Monday, and I expect that vote to be in relation to a judicial nomination. We will be announcing later in the day the timing of that vote.

Mr. KENNEDY. Mr. President, as we conclude our debate on this bill, I thank all of my colleagues for the fruitful debate we have had on these issues, which are vitally important to America's workers and their families.

I thank Senator FRIST and Senator DASCHLE for their leadership in ensuring that this bill was passed quickly. I also thank my colleagues, Senator GRASSLEY, Senator BAUCUS, and Senator GREGG for working with me to develop this moderate, bipartisan measure to protect our Nation's pension plans. And I thank the following staff members for all of the work they have done on this bill: Rohit Kumar, counsel and policy adviser to Majority Leader FRIST; Chuck Marr, economic policy adviser to Minority Leader DASCHLE; David Thompson, labor and pensions policy director for Senator GREGG; Diann Howland, pension policy adviser to Senator GRASSLEY; and Judy Miller, professional staff member for Senator BAUCUS. I particularly thank my own staff—Holly Fechner, chief labor counsel; Portia Wu, labor and pensions counsel; and Kathleen Wildman, labor policy office staff assistant—for all of their hard work on this issue.

Defined benefit pension plans provide certainty and security for workers and retirees. I believe that we can—and we must—do more to protect the security of America's workers and retirees. Americans who have worked hard and played by the rules deserve to enjoy their old age, to retire without having to worry whether they have enough money to pay for their prescription drugs, to pay for electricity, or even to pay for food.

There are many challenges facing our pension system. Our Nation's pension participation rate is the lowest it has been in over a decade. Part-time and low-wage workers continue to lag behind other workers in pension coverage.

We must improve our pension system so that all workers can have a pension. We must increase pension portability for workers—who may have many jobs over a lifetime—without sacrificing security. We must ensure that companies adequately fund their pension plans. We must encourage companies to put more money into their pension plans when times are good, instead of only penalizing them when times are bad.

By passing this bipartisan legislation, we are taking a much-needed first step to stabilize our pension plans.

This legislation has three critical components to help defined benefit pension plans. First, it temporarily replaces the 30-year Treasury bond rate used to calculate employers' required contributions to pension plans with a corporate bond rate. This will stabilize our Nation's defined benefit pension plans and enable them to continue to provide the benefits they have promised.

Second, it provides for additional deficit reduction contribution relief to companies that had well-funded pension plans in the past and need extra assistance now. This relief will help protect the pensions and jobs of workers in these industries.

Finally, the bill includes important relief for multiemployer plans, which fill major needs in our pension system. Multiemployer plans provide pensions to many low-wage workers, as well as short-term and seasonal workers who might not otherwise be able to earn a pension.

I thank all of my colleagues for the support they have given to this bill. This is an important first step, but it is only a first step. I hope my colleagues will join with me in the future to improve and expand our defined benefit system, so that we can ensure that all Americans receive the secure retirement they deserve.

Mr. ROCKEFELLER. Mr. President, I am very pleased that the Senate has just passed the Pension Stability Act by an overwhelming margin. I spoke yesterday on behalf of the legislation, because I understand how important these changes are to the employers who offer defined benefit pension plans and to the employees who are counting on those pension benefits. I would like to just add a few words today to encourage the House of Representatives to quickly approve the bill, as amended by the Senate, and get this legislation to President Bush at the earliest possible date.

The pension reforms provided in this bill are urgently needed. Many large companies have contacted me to stress how important it is that Congress act to update the interest rate used in calculating pension liabilities. Continuing to require employers to use the outdated 30-year Treasury rate would jeopardize pension plans for millions of workers. I have also met with several executives from our Nation's airlines. The temporary relief from deficit reduction contributions provided by this bill is critically important to our struggling airline industry.

As a result of both September 11 and the slow economy during the last few years, our Nation's airlines have dealt with extremely difficult business conditions. The industry has already laid off more than 200,000 people, and many airlines are struggling either to emerge from bankruptcy or to avoid having to file for bankruptcy. By providing airlines some breathing room when it comes to pension payments, we can protect workers' benefits that might otherwise be cancelled and protect workers' jobs that might otherwise be cut. Ultimately, this bill is an effort to do what we can to take care of workers who have already seen involuntary furloughs, seen their wages reduced, and seen their pensions cut. In my judgment, preserving the benefits and rights of workers who make our industries strong is crucial to strengthening our economy.

This bill will help employers to honor their commitments to their employees, many of whom have already sacrificed so much for their companies. I am very pleased that by a vote of 86 to 9, my Senate colleagues approved this bill. I hope that the House will listen to the clear message that we sent today. For the sake of employers and their employees, Congress and the President must enact these pension reforms now.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, today the Senate passed critical pension funding reform legislation that will protect millions of American workers from losing their defined benefit pension plans. Although only a temporary solution, the Pension Funding Equity Act is essential to prevent companies from having to freeze or terminate their defined benefit pension plans because of outdated rules that determine how their pension plan liabilities are calculated.

Defined benefit pension plans are an essential component of retirement security for over half of America's working men and women. Unfortunately, trends show a decline in the use of defined benefit pension plans, with only one quarter as many companies providing defined benefit plans today as did 20 years ago. Since 2003, 3.3 million Americans having lost their pension coverage. The volatility in the stock market in the last few years—in which Americans lost billions in retirement assets—leaves little doubt that we must do more to reverse the decline in the use of defined benefit pension plans and expand the retirement security of defined benefit pension plans to more Americans. The Pension Funding Equity Act is an important step towards addressing this challenge.

In the last 3 years, companies that provide defined benefit pension plans to their employees have come under extreme financial stress due to the sluggish economy and changes in the interest rate that determines their pension plan liability. The Pension Funding Equity Act of 2003 provides much needed relief to help these companies maintain retirement benefits for their employees as the country works towards economic recovery. This legislation provides a temporary 2-year period of funding relief by updating the interest rate that companies must use when calculating the liabilities of their pension plans. A more accurate mix of long-term corporate bond rates will replace the now defunct 30-year Treasury rate in the calculation of pension plan liabilities.

In addition to protecting the defined benefit plans of American workers, the Pension Funding Equity Act is expected to provide $16 billion in additional savings to companies, which will facilitate job creation by freeing up funds for additional wages and hiring.

I applaud the passage of the Pension Funding Equity Act and look forward to working with my colleagues in crafting a long-term solution to improve and expand our pension system.●

EXECUTIVE SESSION

NOMINATION OF GARY L. SHARPE TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the nomination of Gary L. Sharpe to be United States District Judge. The clerk will state the nomination.

The legislative clerk read the nomination of Gary L. Sharpe, of New York, to be United States District Judge for the Northern District of New York.

The PRESIDING OFFICER. Who yields time?

The Senator from Utah.

Mr. HATCH. Madam President, I rise today in support of our nominee to the U.S. District Court of the Northern District of New York, Gary L. Sharpe.

Judge Sharpe graduated magna cum laude from Buffalo University in 1971 where he was a member of Phi Beta Kappa. Three years later, he graduated from Cornell Law School.

Judge Sharpe had a distinguished legal career prior to his appointment as a Federal magistrate judge for the Northern District of New York in 1997. He had been an Assistant Broome County District Attorney in Binghamton, a special assistant New York Attorney General in Syracuse, a supervisory Assistant U.S. Attorney, and the interim U.S. Attorney for the Northern District of New York.

Judge Sharpe is also a Vietnam veteran, having served our country in both the U.S. Army and Navy.

Judge Sharpe has a wealth of experience that will serve him well on the Federal bench. I am very confident that he will make an excellent Federal judge. I commend President Bush for nominating him, and I urge my colleagues to join me in supporting his nomination.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, last week I shared with the Senate several disappointing developments regarding judicial nominations: the Pickering recess appointment, the renomination of Claude Allen, and the pilfering of Democratic offices' computer files by Republican staff. In spite of all those affronts, Senate Democrats today cooperate in the confirmation of another nominee. We do so without the kinds of delays and obstruction that Republicans employed when President Clinton's judicial nominees were being obstructed and Republican Senators complained about his recess appointments as an affront to the Constitution and the Senate.

The first nominations issue I would like to discuss is the recess appointment of Judge Pickering. Just a few days ago on January 16, President Bush made his most cynical and divisive appointment to date when he bypassed the Senate and unilaterally installed Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit. That appointment is without the consent of the Senate and is a particular affront to the many individuals and membership organizations representing African Americans in the Fifth Circuit who have strongly opposed this nomination.

With respect to his extreme judicial nominations, President George W. Bush is the most divisive President in American history. Through these nominees, President Bush is dividing the American people and undermining the fairness and independence of the Federal judiciary on which all Americans depend.

After fair hearings and open debate, the Senate Judiciary Committee rejected the Pickering nomination in 2002. Originally nominated in 2001 by President Bush, this nominee's record underwent a thorough examination by the Senate Judiciary Committee and was found lacking. Judge Pickering's nomination was rejected for this promotion by the Committee in 2002 because of his poor record as a judge and the ethical problems raised by his handling of his duties in specific instances. Nonetheless, the President sent back his nomination to the Senate last year, the first in our history to reject the judgment of the Judiciary Committee on a judicial nominee. This is the only President who has renominated someone rejected on a vote by the Judiciary Committee for a judicial appointment.

The renomination of Charles Pickering lay dormant for most of last year while Republicans reportedly planned further hearings. Judge Pickering himself said that several hearings on his nomination were scheduled and cancelled over the last year by Republicans. Then, without any additional information or hearings, Republicans decided to forego any pretense at proceeding in regular order. Instead, they placed the name of Judge Pickering on the committee's markup agenda and pushed his nomination through with their one-vote majority. The committee had been told since last January that a new hearing would be held before a vote on this nomination, but that turned out to be an empty promise.

Why was the Pickering nomination moved ahead of other well-qualified candidates late last fall? Why was the Senate required to expend valuable time rehashing arguments about a controversial nomination that has already been rejected? The timing was arranged by Republicans to coincide with the gubernatorial election in Mississippi. Like so much about this President's actions with respect to the federal courts, partisan Republican politics seemed to be the governing consideration. Indeed, as the President's own former Secretary of the Treasury points out from personal experience, politics governs more than just Federal judicial nominations in the Bush administration.

Charles Pickering was a nominee rejected by the Judiciary Committee on the merits—a nominee who has a record that does not qualify him for this promotion, who injects his personal views into judicial opinions, and who has made highly questionable ethical judgments. The nominee's supporters, including some Republican Senators, have chosen to imply that Democrats opposed the nominee because of his religion or region. That is untrue and offensive. These smears have been as ugly as they are wrong.