

108TH CONGRESS  
1ST SESSION

# S. 1610

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure the adequate funding of pension plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2003

Mr. BAYH (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure the adequate funding of pension plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defined Benefit Pen-  
5 sion Plan Reform Act of 2003”.

1 **SEC. 2. MULTIEMPLOYER PLAN EMERGENCY INVESTMENT**2 **LOSS RULE.**

3 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 4 OF 1986.—Section 412(b)(7) of the Internal Revenue  
 5 Code of 1986 (relating to special rules for multiemployer  
 6 plans) is amended by adding at the end the following:

7 “(F) EMERGENCY INVESTMENT LOSS  
 8 METHOD.—

9 “(i) IN GENERAL.—In lieu of amor-  
 10 tizing net experience loss as prescribed in  
 11 paragraph (2)(B)(iv), a multiemployer plan  
 12 may elect to use the emergency investment  
 13 loss method described in this subpara-  
 14 graph, starting with the first plan year in  
 15 which there is an emergency investment  
 16 loss.

17 “(ii) EMERGENCY INVESTMENT  
 18 LOSS.—An emergency investment loss for  
 19 any plan year beginning on or after July 1,  
 20 1999, and ending before January 1, 2004,  
 21 is the amount (if any) by which—

22 “(I) the fair market value of the  
 23 plan’s assets as of the last day of the  
 24 plan year, is less than

25 “(II) the fair market value which  
 26 would have been determined if the

1 plan's earnings for the plan year had  
2 been equal to the projected investment  
3 return based on the actuarial interest  
4 rate under paragraph (5)(A) for the  
5 plan year, applied to the fair market  
6 value of assets as of the beginning of  
7 the year and noninvestment cash  
8 flows during the year.

9 “(iii) AMORTIZATION OF EMERGENCY  
10 INVESTMENT LOSS.—The funding standard  
11 account shall be charged with the amounts  
12 necessary to amortize in equal annual in-  
13 stallments (until fully amortized) the  
14 plan's emergency investment loss over a  
15 period of 30 plan years.

16 “(iv) TREATMENT OF ADJUSTED NET  
17 ACTUARIAL EXPERIENCE.—If an election is  
18 in effect for any plan year described in  
19 clause (ii)—

20 “(I) any net experience gain oth-  
21 erwise determined for such year under  
22 paragraph (2)(B)(iv) shall be in-  
23 creased by an amount equal to the  
24 emergency investment loss for such  
25 year, and

1                   “(II) any net experience loss oth-  
2                   erwise determined for such year under  
3                   paragraph (3)(B)(ii) shall be reduced  
4                   by the emergency investment loss for  
5                   such year, except that if such emer-  
6                   gency investment loss exceeds such  
7                   net experience loss, the excess shall be  
8                   treated as a net experience gain for  
9                   such year for purposes of paragraph  
10                  (2)(B)(iv).”

11           (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
12 INCOME SECURITY ACT OF 1974.—Section 302(b)(7) of  
13 the Employee Retirement Income Security Act of 1974  
14 (29 U.S.C. 1082(b)(7)) is amended by adding at the end  
15 the following:

16           “(F)(i) In lieu of amortizing net experience loss as  
17 prescribed in paragraph (2)(B)(iv), a multiemployer plan  
18 may elect to use the emergency investment loss method  
19 described in this subparagraph, starting with the first plan  
20 year in which there is an emergency investment loss.

21           “(ii) An emergency investment loss for any plan year  
22 beginning on or after July 1, 1999, and ending before  
23 January 1, 2004, is the amount (if any) by which—

24                   “(I) the fair market value of the plan’s assets  
25                   as of the last day of the plan year, is less than

1           “(II) the fair market value which would have  
2           been determined if the plan’s earnings for the plan  
3           year had been equal to the projected investment re-  
4           turn based on the actuarial interest rate under para-  
5           graph (5)(A) for the plan year, applied to the fair  
6           market value of assets as of the beginning of the  
7           year and noninvestment cash flows during the year.

8           “(iii) The funding standard account shall be charged  
9           with the amounts necessary to amortize in equal annual  
10          installments (until fully amortized) the plan’s emergency  
11          investment loss over a period of 30 plan years.

12          “(iv) If an election is in effect for any plan year de-  
13          scribed in clause (ii)—

14                 “(I) any net experience gain otherwise deter-  
15                 mined for such year under paragraph (2)(B)(iv)  
16                 shall be increased by an amount equal to the emer-  
17                 gency investment loss for such year, and

18                 “(II) any net experience loss otherwise deter-  
19                 mined for such year under paragraph (3)(B)(ii) shall  
20                 be reduced by the emergency investment loss for  
21                 such year, except that if such emergency investment  
22                 loss exceeds such net experience loss, the excess shall  
23                 be treated as a net experience gain for such year  
24                 for purposes of paragraph (2)(B)(iv).”

25          (c) ELECTION PROCEDURE.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
2           ury shall prescribe a procedure under which multi-  
3           employer plans that elect to use the emergency in-  
4           vestment loss method described in section  
5           412(b)(7)(F) of the Internal Revenue Code of 1986  
6           and section 302(b)(7)(F) of the Employee Retire-  
7           ment Income Security Act of 1974 may do so either  
8           by starting the special amortization periods in the  
9           actuarial valuations for each of the affected plan  
10          years or by starting with a cumulative emergency in-  
11          vestment loss and adjusted net actuarial experience  
12          (based on the outstanding balance of the experience  
13          gain bases for the affected plan years, reduced by  
14          the cumulative emergency investment loss) in the ac-  
15          tuarial valuation for the last plan year ending before  
16          January 1, 2004.

17          (2) FILING PERIOD.—The procedures described  
18          in paragraph (1) shall provide a period of not less  
19          than 210 days after the date of enactment of this  
20          Act for multiemployer plans to file Schedule Bs (re-  
21          lating to actuarial information under the plan) to  
22          the Form 5500 Annual Reports for the plan years  
23          for which the emergency investment loss method is  
24          elected, including amended Schedule Bs for annual  
25          reports previously filed.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to years beginning after June 30,  
3 1999.

4 **SEC. 3. MORTALITY TABLE ADJUSTMENT.**

5 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
6 OF 1986.—Section 412(l)(7)(C) of the Internal Revenue  
7 Code of 1986 is amended by adding at the end the fol-  
8 lowing:

9 “(iv) SEPARATE MORTALITY TABLES  
10 FOR BLUE-COLLAR AND WHITE-COLLAR  
11 WORKERS.—

12 “(I) IN GENERAL.—Notwith-  
13 standing clause (ii), in the case of  
14 plan years beginning after December  
15 31, 2003, the Secretary shall establish  
16 separate mortality tables for blue-col-  
17 lar workers and white-collar workers  
18 which may be used (in lieu of the ta-  
19 bles under clause (ii)) to determine  
20 current liability under this subsection.  
21 For this purpose, the Secretary shall  
22 take into account the Society of Actu-  
23 aries RP–2000 Mortality Table, as  
24 adjusted to take into account the col-  
25 lar adjustment prescribed in such

1 table to reflect the workforce covered  
2 by the plan.

3 “(II) CLASSIFICATION OF WORK-  
4 ERS.—For purposes of this clause, in-  
5 dividuals shall be classified as blue-  
6 collar or white-collar workers under  
7 rules prescribed by the Secretary. In  
8 prescribing such rules, the Secretary  
9 shall treat professional employees  
10 (within the meaning of section 410)  
11 as white-collar workers.

12 “(III) CONSISTENT USE.—If an  
13 employer elects to use the tables pre-  
14 scribed under subclause (I) for any  
15 plan established or maintained by the  
16 employer, the employer shall use the  
17 tables for all such plans other than a  
18 plan for which use of the tables is  
19 prohibited under regulations pre-  
20 scribed by the Secretary.”

21 (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
22 INCOME SECURITY ACT OF 1974.—Section 302(d)(7)(C)  
23 of the Employee Retirement Income Security Act of 1974  
24 (29 U.S.C. 1082(d)(7)(C)) is amended by adding at the  
25 end the following:

1                   “(iv) SEPARATE MORTALITY TABLES  
2                   FOR BLUE-COLLAR AND WHITE-COLLAR  
3                   WORKERS.—

4                   “(I) IN GENERAL.—Notwith-  
5                   standing clause (ii), in the case of  
6                   plan years beginning after December  
7                   31, 2003, the Secretary of the Treas-  
8                   ury shall establish separate mortality  
9                   tables for blue-collar workers and  
10                  white-collar workers which may be  
11                  used (in lieu of the tables under  
12                  clause (ii)) to determine current liabil-  
13                  ity under this subsection. For this  
14                  purpose, the Secretary of the Treas-  
15                  ury shall take into account the Society  
16                  of Actuaries RP-2000 Mortality  
17                  Table, as adjusted to take into ac-  
18                  count the collar adjustment prescribed  
19                  in such table to reflect the workforce  
20                  covered by the plan.

21                  “(II) CLASSIFICATION OF WORK-  
22                  ERS.—For purposes of this clause, in-  
23                  dividuals shall be classified as blue-  
24                  collar or white-collar workers under  
25                  rules prescribed by the Secretary of

1 the Treasury. In prescribing such  
2 rules, the Secretary of the Treasury  
3 shall treat professional employees  
4 (within the meaning of section 410 of  
5 the Internal Revenue Code of 1986)  
6 as white-collar workers.

7 “(III) CONSISTENT USE.—If an  
8 employer elects to use the tables pre-  
9 scribed under subclause (I) for any  
10 plan established or maintained by the  
11 employer, the employer shall use the  
12 tables for all such plans other than a  
13 plan for which use of the tables is  
14 prohibited under regulations pre-  
15 scribed by the Secretary of the Treas-  
16 ury.”.

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall be effective as of the date of the enact-  
19 ment of this Act.

20 **SEC. 4. MODIFICATION OF FULL-FUNDING LIMITATION FOR**  
21 **PURPOSES OF DEDUCTION LIMITS ON EM-**  
22 **PLOYER PENSION CONTRIBUTIONS.**

23 (a) IN GENERAL.—Section 404(a)(1)(A) of the Inter-  
24 nal Revenue Code of 1986 (relating to limitation on de-  
25 ductibility of employer contributions) is amended by add-

1 ing at the end the following: “In determining the full fund-  
2 ing limitation for purposes of the preceding sentence for  
3 any year beginning after December 31, 2003, the amount  
4 determined under section 412(c)(7)(A)(i) shall in no event  
5 be treated as being less than 130 percent of current liabil-  
6 ity (including the expected increase in current liability due  
7 to benefits accruing during the year).”

8 (b) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to years beginning after December  
10 31, 2003.

11 **SEC. 5. REQUIRED NOTIFICATION OF PARTICIPANTS AND**  
12 **BENEFICIARIES OF PLAN TERMINATIONS BY**  
13 **PENSION BENEFIT GUARANTY CORPORA-**  
14 **TION.**

15 (a) IN GENERAL.—Section 4042(b) of the Employee  
16 Retirement Income Security Act of 1974 (29 U.S.C.  
17 1342(b)) is amended by adding at the end the following:

18 “(4)(A) Not later than 30 days after the corporation  
19 notifies a plan administrator under this subsection regard-  
20 ing the commencement of proceedings to terminate a plan  
21 under this section, the corporation shall provide notice of  
22 such proceedings to affected parties as provided in this  
23 paragraph. The notice shall state that such termination  
24 is intended, the proposed termination date, and the proce-  
25 dure for such termination under this section.

1       “(B) Upon notice to the plan of the commencement  
2 of proceedings, the plan administrator shall provide the  
3 corporation with a list of the names and addresses of all  
4 participants and beneficiaries of the plan.

5       “(C) The corporation shall provide—

6           “(i) written notice to each affected party of the  
7 plan; and

8           “(ii) notice in the 2 newspapers with the largest  
9 circulation in the area of the majority of the affected  
10 parties.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to proceedings commenced after  
13 the date of enactment of this Act.

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