

104TH CONGRESS  
2D SESSION

# H. R. 4162

To amend the Employee Retirement Income Security Act of 1974 to provide continued participation under a defined benefit plan to employees who are terminated from employment within seven years of attaining normal retirement age under the plan.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1996

Mr. TORRICELLI introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide continued participation under a defined benefit plan to employees who are terminated from employment within seven years of attaining normal retirement age under the plan.

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 “Continued Participa-  
5 tion Pension Act of 1996”.

1 **SEC. 2. CONTINUED PARTICIPATION IN DEFINED BENEFIT**  
2 **PLANS.**

3 Part 2 of the Employee Retirement Income Security  
4 Act of 1974 (29 U.S.C. 1051 et seq.) is amended by redес-  
5 ignating section 211 as section 212 and by inserting after  
6 section 210 (29 U.S.C. 1060) the following new section:

7 “CONTINUED PARTICIPATION IN DEFINED BENEFIT  
8 PLANS FOR CERTAIN INDIVIDUALS

9 “SEC. 211. (a) IN GENERAL.—A defined benefit plan  
10 shall provide, in accordance with this section, that each  
11 qualified beneficiary who would lose eligibility to accrue  
12 benefits under the plan as a result of a qualifying event,  
13 may elect, within the election period, continued participa-  
14 tion under the plan.

15 “(b) CONTINUED PARTICIPATION.—For purposes of  
16 this section, the term ‘continued participation’ means con-  
17 tinued accrual of benefits by a qualified beneficiary in ac-  
18 cordance with section 204(b)(1), if the following require-  
19 ments are met:

20 “(1) DETERMINATION OF SERVICE.—A partici-  
21 pant shall be treated as having not incurred a break  
22 in service with the employer or employers maintain-  
23 ing the plan. The period of continued participation  
24 shall be deemed to constitute service with the em-  
25 ployer or employers maintaining the plan for the  
26 purpose of determining the nonforfeitability of the

1 qualified beneficiary's accrued benefits and for the  
2 purpose of determining the accrual of benefits. The  
3 period of continued participation shall be deemed to  
4 be service with the employer under the terms of the  
5 plan or any applicable collective bargaining agree-  
6 ment.

7           “(2) TERMS OF CONTINUED PARTICIPATION.—  
8 For purposes of determining the amount of any li-  
9 ability and any obligation of the plan, earnings and  
10 forfeitures shall not be included. In the case of a  
11 multiemployer plan, any liability of the plan de-  
12 scribed in this section shall be allocated—

13                   “(A) by the plan in such manner as the  
14 sponsor maintaining the plan shall provide; or

15                   “(B) if the sponsor does not so provide, to  
16 the last employer employing the person before  
17 the qualifying event.

18           “(3) PERIOD OF CONTINUED PARTICIPATION.—  
19 The period of participation shall extend for the pe-  
20 riod beginning on the date of the qualifying event  
21 and ending not earlier than the earliest of the fol-  
22 lowing:

23                   “(A) MAXIMUM REQUIRED PERIOD.—The  
24 date on which the participant reaches (or would

1           have reached) normal retirement age under the  
2           plan.

3           “(B) END OF PLAN.—The date on which  
4           the employer ceases to provide any defined ben-  
5           efit plan to any employee.

6           “(C) FAILURE TO PAY CONTRIBUTION.—  
7           The date on which benefits cease to accrue  
8           under the plan by reason of a failure to make  
9           timely payment of any contribution required  
10          under the plan with respect to the qualified  
11          beneficiary.

12          “(4) CONTRIBUTION REQUIREMENTS.—

13                 “(A) IN GENERAL.—A qualified beneficiary  
14                 electing continued participation is liable to the  
15                 defined benefit plan for funding any obligation  
16                 of the plan to provide the benefits described in  
17                 paragraph (1). The plan shall allocate to quali-  
18                 fied beneficiaries the amount of applicable con-  
19                 tribution attributable to employer contributions  
20                 and mandatory employee contributions under  
21                 the plan, in the same manner that employer  
22                 contributions and mandatory employee con-  
23                 tributions are allocated to similarly situated  
24                 beneficiaries with respect to whom a qualifying  
25                 event has not occurred. The plan shall provide

1 for benefit accruals attributable to voluntary  
2 employee contributions only to the extent such  
3 benefit accruals attributable to such contribu-  
4 tions were available to the participant prior to  
5 the qualifying event. For purposes of computing  
6 the beneficiary's contributions, the participant  
7 shall be deemed to have received compensation  
8 during the period of continued participation, at  
9 the rate in effect prior to the occurrence of the  
10 qualifying event, as if the participant had con-  
11 tinued in service under the plan at the rate of  
12 1,000 hours of work during any 12-month pe-  
13 riod.

14 “(B) LIMITATION.—For any period of con-  
15 tinued participation, the contribution made by  
16 the qualified beneficiary—

17 “(i) shall not exceed 102 percent of  
18 the applicable contribution for such period,  
19 and

20 “(ii) may, at the election of the payor,  
21 be made in monthly installments.

22 In no event may the plan require the payment  
23 of any contribution before the day which is 45  
24 days after the day on which the qualified bene-

1           ficiary made the initial election for continued  
2           participation.

3           “(c) ELECTION PERIOD.—

4           “(1) IN GENERAL.—The election period—

5           “(A) begins not later than the date on  
6           which benefits accrual would, but for continued  
7           participation in accordance with the section,  
8           cease, and

9           “(B) is of at least 90 days’ duration.

10           “(2) EFFECT OF ELECTION ON OTHER BENE-  
11           FICIARIES.—Except as otherwise specified in an elec-  
12           tion, any election of continued participation by a  
13           qualified beneficiary shall be deemed to include an  
14           election of continued participation on behalf of any  
15           other qualified beneficiary who would cease to be a  
16           beneficiary under the plan by reason of the qualify-  
17           ing event.

18           “(d) EXCEPTION FOR CERTAIN PLANS.—Subsection  
19           (a) shall not apply to any defined benefit plan for any cal-  
20           endar year if all employers maintaining such plan nor-  
21           mally employed fewer than 20 employees on a typical busi-  
22           ness day during the preceding calendar year.

23           “(e) DEFINITIONS.—For purposes of this section—

24           “(1) APPLICABLE CONTRIBUTION.—The appli-  
25           cable contribution for any period of continued par-

1 participation of qualified beneficiaries shall be equal to  
2 the actuarial value of benefit accruals attributable to  
3 the period of continued participation, as determined  
4 under regulations of the Secretary.

5 “(2) QUALIFIED BENEFICIARY.—The term  
6 ‘qualified beneficiary’ means any beneficiary under  
7 the plan on the day before the qualifying event, in-  
8 cluding the participant in the case of a qualifying  
9 event described in paragraph (3)(A).

10 “(3) QUALIFYING EVENT.—The term ‘qualify-  
11 ing event’ means any of the following events occur-  
12 ring within seven years of attainment by the partici-  
13 pant of normal retirement age, which, but for the  
14 continued participation provided under this section,  
15 would result in the cessation of benefit accruals of  
16 a qualified beneficiary:

17 “(A) The termination (other than by rea-  
18 son of such employee’s gross misconduct), or  
19 reduction of hours, of the participant’s employ-  
20 ment.

21 “(B) The death of the participant.”.

22 **SEC. 3. EFFECTIVE DATES.**

23 (a) GENERAL RULE.—This Act shall apply to plan  
24 years beginning on or after July 1, 1996.

1           (b) SPECIAL RULE FOR COLLECTIVE BARGAINING  
2 AGREEMENTS.—In the case of a defined benefit plan  
3 maintained pursuant to one or more collective bargaining  
4 agreements between employee representatives and one or  
5 more employers ratified before the date of the enactment  
6 of this Act, this section shall not apply to plan years begin-  
7 ning before the later of—

8                   (1) the date on which the last of the collective  
9 bargaining agreements relating to the plan termi-  
10 nates (determined without regard to any extension  
11 thereof agreed to after the date of the enactment of  
12 this Act), or

13                   (2) January 1, 2000.

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