

106TH CONGRESS  
1ST SESSION

# S. 659

To amend the Internal Revenue Code of 1986 to require pension plans to provide adequate notice to individuals whose future benefit accruals are being significantly reduced, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 1999

Mr. MOYNIHAN (for himself, Mr. ROBB, and Mr. KERREY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to require pension plans to provide adequate notice to individuals whose future benefit accruals are being significantly reduced, 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 “Pension Right to Know  
5       Act”.

1 **SEC. 2. NOTICE REQUIREMENTS FOR LARGE PENSION**  
 2 **PLANS SIGNIFICANTLY REDUCING FUTURE**  
 3 **PENSION BENEFIT ACCRUALS.**

4 (a) PLAN REQUIREMENT.—Section 401(a) of the In-  
 5 ternal Revenue Code of 1986 (relating to qualified pen-  
 6 sion, profit-sharing, and stock bonus plans) is amended  
 7 by inserting after paragraph (34) the following new para-  
 8 graph:

9 “(35) NOTICE REQUIREMENTS FOR LARGE DE-  
 10 FINED BENEFIT PLANS SIGNIFICANTLY REDUCING  
 11 FUTURE BENEFIT ACCRUALS.—

12 “(A) IN GENERAL.—If a large defined ben-  
 13 efit plan adopts an amendment which has the  
 14 effect of significantly reducing the rate of fu-  
 15 ture benefit accrual of 1 or more participants,  
 16 a trust which is part of such plan shall not con-  
 17 stitute a qualified trust under this section un-  
 18 less, after adoption of such amendment and not  
 19 less than 15 days before its effective date, the  
 20 plan administrator provides—

21 “(i) a written statement of benefit  
 22 change described in subparagraph (B) to  
 23 each applicable individual, and

24 “(ii) a written notice setting forth the  
 25 plan amendment and its effective date to

1           each employee organization representing  
2           participants in the plan.

3           Any such notice may be provided to a person  
4           designated, in writing, by the person to which  
5           it would otherwise be provided. The plan ad-  
6           ministrator shall not be treated as failing to  
7           meet the requirements of this subparagraph  
8           merely because the statement or notice is pro-  
9           vided before the adoption of the plan amend-  
10          ment if no material modification of the amend-  
11          ment occurs before the amendment is adopted.

12           “(B) STATEMENT OF BENEFIT CHANGE.—  
13          A statement of benefit change described in this  
14          subparagraph shall—

15                   “(i) be written in a manner calculated  
16                   to be understood by the average plan par-  
17                   ticipant, and

18                   “(ii) include the information described  
19                   in subparagraph (C).

20           “(C) INFORMATION CONTAINED IN STATE-  
21          MENT OF BENEFIT CHANGE.—The information  
22          described in this subparagraph includes the fol-  
23          lowing:

24                   “(i) Notice setting forth the plan  
25                   amendment and its effective date.

1 “(ii) A comparison of the following  
2 amounts under the plan with respect to an  
3 applicable individual, determined both with  
4 and without regard to the plan amend-  
5 ment:

6 “(I) The accrued benefit and the  
7 present value of the accrued benefit as  
8 of the effective date.

9 “(II) The projected accrued ben-  
10 efit and the projected present value of  
11 the accrued benefit as of the date  
12 which is 3 years, 5 years, and 10  
13 years from the effective date and as of  
14 the normal retirement age.

15 “(iii) A table of all annuity factors  
16 used to calculate benefits under the plan,  
17 presented in the form provided in section  
18 72 and the regulations thereunder.

19 Benefits described in clause (ii) shall be stated  
20 separately and shall be calculated by using the  
21 applicable mortality table and the applicable in-  
22 terest rate under section 417(e)(3)(A).

23 “(D) LARGE DEFINED BENEFIT PLAN; AP-  
24 PPLICABLE INDIVIDUAL.—For purposes of this  
25 paragraph—

1                   “(i)   LARGE   DEFINED   BENEFIT  
2                   PLAN.—The term ‘large defined benefit  
3                   plan’ means any defined benefit plan which  
4                   had 1,000 or more participants who had  
5                   accrued a benefit under the plan (whether  
6                   or not vested) as of the last day of the  
7                   plan year preceding the plan year in which  
8                   the plan amendment becomes effective.

9                   “(ii)   APPLICABLE   INDIVIDUAL.—The  
10                  term ‘applicable individual’ means—

11                               “(I) each participant in the plan,  
12                               and

13                               “(II) each beneficiary who is an  
14                               alternate payee (within the meaning  
15                               of section 414(p)(8)) under an appli-  
16                               cable qualified domestic relations  
17                               order (within the meaning of section  
18                               414(p)(1)(A)).

19                   “(E)   ACCRUED   BENEFIT;   PROJECTED   RE-  
20                   TIREMENT   BENEFIT.—For purposes of this  
21                   paragraph—

22                               “(i)   PRESENT   VALUE   OF   ACCRUED  
23                               BENEFIT.—The present value of an ac-  
24                               crued benefit of any applicable individual  
25                               shall be calculated as if the accrued benefit

were in the form of a single life annuity commencing at the participant's normal retirement age (and by taking into account any early retirement subsidy).

“(ii) PROJECTED ACCRUED BENEFIT.—

“(I) IN GENERAL.—The projected accrued benefit of any applicable individual shall be calculated as if the benefit were payable in the form of a single life annuity commencing at the participant's normal retirement age (and by taking into account any early retirement subsidy).

“(II) COMPENSATION AND OTHER ASSUMPTIONS.—Such benefit shall be calculated by assuming that compensation and all other benefit factors would increase for each plan year beginning after the effective date of the plan amendment at a rate equal to the median average of the CPI increase percentage (as defined in section 215(i) of the Social Security Act) for the 5 calendar years immediately

preceding the calendar year before the  
calendar year in which such effective  
date occurs.

“(III) BENEFIT FACTORS.—For  
purposes of subclause (II), the term  
‘benefit factors’ means social security  
benefits and all other relevant factors  
under section 411(b)(1)(A) used to  
compute benefits under the plan  
which had increased from the 2d plan  
year preceding the plan year in which  
the effective date of the plan amend-  
ment occurs to the 1st such preceding  
plan year.

“(iii) NORMAL RETIREMENT AGE.—  
The term ‘normal retirement age’ means  
the later of—

“(I) the date determined under  
section 411(a)(8), or

“(II) the date a plan participant  
attains age 62.”

(b) AMENDMENTS TO ERISA.—

(1) BENEFIT STATEMENT REQUIREMENT.—Sec-  
tion 204(h) of the Employee Retirement Income Se-

1 security Act of 1974 (29 U.S.C. 1054(h)) is amended  
2 by adding at the end the following new paragraphs:

3 “(3)(A) If paragraph (1) applies to the adop-  
4 tion of a plan amendment by a large defined benefit  
5 plan, the plan administrator shall, after adoption of  
6 such amendment and not less than 15 days before  
7 its effective date, provide with the notice under para-  
8 graph (1) a written statement of benefit change de-  
9 scribed in subparagraph (B) to each applicable indi-  
10 vidual.

11 “(B) A statement of benefit change described in  
12 this subparagraph shall—

13 “(i) be written in a manner calculated to  
14 be understood by the average plan participant,  
15 and

16 “(ii) include the information described in  
17 subparagraph (C).

18 “(C) The information described in this subpara-  
19 graph includes the following:

20 “(i) A comparison of the following amounts  
21 under the plan with respect to an applicable in-  
22 dividual, determined both with and without re-  
23 gard to the plan amendment:

1                   “(I) The accrued benefit and the  
2                   present value of the accrued benefit as of  
3                   the effective date.

4                   “(II) The projected accrued benefit  
5                   and the projected present value of the ac-  
6                   crued benefit as of the date which is 3  
7                   years, 5 years, and 10 years from the ef-  
8                   fective date and as of the normal retire-  
9                   ment age.

10                  “(ii) A table of all annuity factors used to  
11                  calculate benefits under the plan, presented in  
12                  the form provided in section 72 of the Internal  
13                  Revenue Code of 1986 and the regulations  
14                  thereunder.

15                  Benefits described in clause (i) shall be stated sepa-  
16                  rately and shall be calculated by using the applicable  
17                  mortality table and the applicable interest rate  
18                  under section 417(e)(3)(A) of such Code.

19                  “(D) For purposes of this paragraph—

20                         “(i) The term ‘large defined benefit plan’  
21                         means any defined benefit plan which had  
22                         1,000 or more participants who had accrued a  
23                         benefit under the plan (whether or not vested)  
24                         as of the last day of the plan year preceding the

1 plan year in which the plan amendment be-  
2 comes effective.

3 “(ii) The term ‘applicable individual’  
4 means an individual described in subparagraph  
5 (A) or (B) of paragraph (1).

6 “(E) For purposes of this paragraph—

7 “(i) The present value of an accrued ben-  
8 efit of any applicable individual shall be cal-  
9 culated as if the accrued benefit were in the  
10 form of a single life annuity commencing at the  
11 participant’s normal retirement age (and by  
12 taking into account any early retirement sub-  
13 sidy).

14 “(ii)(I) The projected accrued benefit of  
15 any applicable individual shall be calculated as  
16 if the benefit were payable in the form of a sin-  
17 gle life annuity commencing at the participant’s  
18 normal retirement age (and by taking into ac-  
19 count any early retirement subsidy).

20 “(II) Such benefit shall be calculated by  
21 assuming that compensation and all other ben-  
22 efit factors would increase for each plan year  
23 beginning after the effective date of the plan  
24 amendment at a rate equal to the median aver-  
25 age of the CPI increase percentage (as defined

1 in section 215(i) of the Social Security Act) for  
2 the 5 calendar years immediately preceding the  
3 calendar year before the calendar year in which  
4 such effective date occurs.

5 “(III) For purposes of subclause (II), the  
6 term ‘benefit factors’ means social security ben-  
7 efits and all other relevant factors under section  
8 204(b)(1)(A) used to compute benefits under  
9 the plan which had increased from the 2d plan  
10 year preceding the plan year in which the effec-  
11 tive date of the plan amendment occurs to the  
12 1st such preceding plan year.

13 “(iii) The term ‘normal retirement age’  
14 means the later of—

15 “(I) the date determined under sec-  
16 tion 3(24), or

17 “(II) the date a plan participant at-  
18 tains age 62.

19 “(4) A plan administrator shall not be treated  
20 as failing to meet the requirements of this sub-  
21 section merely because the notice or statement is  
22 provided before the adoption of the plan amendment  
23 if no material modification of the amendment occurs  
24 before the amendment is adopted.”

1           (2) CONFORMING AMENDMENT.—Section  
 2       204(h)(1) of such Act (29 U.S.C. 1054(h)(1)) is  
 3       amended by inserting “(including any written state-  
 4       ment of benefit change if required by paragraph  
 5       (3))” after “written notice”.

6       (c) EFFECTIVE DATES.—

7           (1) IN GENERAL.—The amendments made by  
 8       this section shall apply to plan amendments taking  
 9       effect in plan years beginning on or after the earlier  
 10      of—

11           (A) the later of—

12               (i) January 1, 1999, or

13               (ii) the date on which the last of the  
 14       collective bargaining agreements pursuant  
 15       to which the plan is maintained terminates  
 16       (determined without regard to any exten-  
 17       sion thereof after the date of the enact-  
 18       ment of this Act), or

19           (B) January 1, 2001.

20       (2) EXCEPTION WHERE NOTICE GIVEN.—The  
 21       amendments made by this section shall not apply to  
 22       any plan amendment for which written notice was  
 23       given to participants or their representatives before  
 24       March 17, 1999, without regard to whether the  
 25       amendment was adopted before such date.

1           (3) SPECIAL RULE.—The period for providing  
2           any notice required by, or any notice the contents of  
3           which are changed by, the amendments made by this  
4           Act shall not end before the date which is 6 months  
5           after the date of the enactment of this Act.

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