

106TH CONGRESS
1ST SESSION

S. 1708

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to require plans which adopt amendments that significantly reduce future benefit accruals to provide participants with adequate notice of the changes made by such amendments.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1999

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

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to require plans which adopt amendments that significantly reduce future benefit accruals to provide participants with adequate notice of the changes made by such amendments.

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 Reduction
5 Disclosure Act of 1999”.

1 **SEC. 2. NOTICE REQUIRED FOR CERTAIN PLAN AMEND-**
2 **MENTS REDUCING FUTURE BENEFIT ACCRU-**
3 **ALS.**

4 (a) GENERAL NOTICE REQUIREMENTS.—Section
5 204(h) of the Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1054(h)) is amended to read as fol-
7 lows:

8 “(h) NOTICE REQUIREMENTS FOR PENSION PLAN
9 AMENDMENTS REDUCING ACCRUALS.—

10 “(1) IN GENERAL.—If an applicable pension
11 plan is amended so as to provide for a significant re-
12 duction in the rate of future benefit accrual of 1 or
13 more applicable individuals, the plan administrator
14 shall—

15 “(A) not later than the 45th day before
16 the effective date of the amendment, provide
17 the written notice described in paragraph (2) to
18 each applicable individual (and to each em-
19 ployee organization representing applicable indi-
20 viduals), and

21 “(B) in the case of a large applicable pen-
22 sion plan—

23 “(i) include in the notice under para-
24 graph (2) the additional information de-
25 scribed in paragraph (3),

1 “(ii) make available the information
 2 described in paragraph (4) in accordance
 3 with such paragraph, and

4 “(iii) provide individual benefit state-
 5 ments in accordance with section 105(e).

6 “(2) BASIC WRITTEN NOTICE.—The notice
 7 under paragraph (1) shall include a summary of the
 8 important terms of the amendment, including—

9 “(A) the effective date of the amendment,

10 “(B) a statement that the amendment is
 11 expected to significantly reduce the rate of fu-
 12 ture benefit accrual,

13 “(C) a description of the classes of applica-
 14 ble individuals to whom the amendment applies,
 15 and

16 “(D) a description of how the amendment
 17 significantly reduces the rate of future benefit
 18 accrual.

19 “(3) ADDITIONAL INFORMATION TO BE PRO-
 20 VIDED BY LARGE APPLICABLE PENSION PLANS.—

21 “(A) IN GENERAL.—The information de-
 22 scribed in this paragraph is—

23 “(i) a description of the plan’s benefit
 24 formulas (including formulas for deter-
 25 mining early retirement benefits) both be-

1 fore and after the amendment and an ex-
2 planation of the effect of the different for-
3 mulas on applicable individuals,

4 “(ii) an explanation of the cir-
5 cumstances (if any) under which (for ap-
6 propriate categories of applicable individ-
7 uals) the amendment is reasonably ex-
8 pected to result in a temporary period
9 after the effective date of the amendment
10 during which there are no or minimal ac-
11 cruals,

12 “(iii) illustrative examples of normal
13 or early retirement benefits meeting the re-
14 quirements of subparagraph (B), and

15 “(iv) notice of each applicable individ-
16 ual’s right to request, and of the proce-
17 dures for requesting, the information re-
18 quired to be provided under paragraph (4)
19 and under section 105(e).

20 “(B) ILLUSTRATIVE EXAMPLES.—Illus-
21 trative examples meet the requirements of this
22 subparagraph if such examples illustrate the
23 adverse effects of the plan amendment. Such
24 examples shall be prepared by the plan adminis-
25 trator in accordance with regulations prescribed

by the Secretary of the Treasury, and such regulations shall require that the examples—

“(i) reflect fairly the different categories of applicable individuals who are similarly affected by the plan amendment after consideration of all relevant factors,

“(ii) show a comparison of benefits for each such category of applicable individuals under the plan (as in effect before and after the effective date) at appropriate future dates, and

“(iii) illustrate any temporary period described in subparagraph (A)(ii).

Such comparison shall be based on benefits in the form of a life annuity and on actuarial assumptions each of which is reasonable (and is so certified by an enrolled actuary) when applied to all participants in the plan.

“(4) SUPPORTING INFORMATION RELATING TO CALCULATION OF BENEFITS.—

“(A) IN GENERAL.—Each individual who receives or who is entitled to receive the information described in paragraph (3) may (after so receiving or becoming so entitled) request

1 the plan administrator to provide the informa-
2 tion described in subparagraph (B).

3 “(B) INFORMATION.—The plan adminis-
4 trator shall, within 15 days after the date on
5 which a request under subparagraph (A) is
6 made, provide to the individual information (in-
7 cluding benefit formulas and actuarial factors)
8 which is sufficient—

9 “(i) to confirm the benefit compari-
10 sons in the illustrative examples described
11 in paragraph (3)(B), and

12 “(ii) to enable the individual to use
13 the individual’s own personal information
14 to make calculations of the individual’s
15 own benefits which are similar to the cal-
16 culations made in such examples.

17 Nothing in this subsection shall be construed to
18 require the plan administrator to provide to an
19 individual such individual’s personal informa-
20 tion for purposes of clause (ii).

21 “(C) TIME LIMITATION ON REQUESTS.—
22 This paragraph shall apply only to requests
23 made during the 12-month period that begins
24 on the later of the effective date of the amend-

1 ment to which it relates or the date the notice
2 described in paragraph (2) is provided.

3 “(5) SANCTIONS.—

4 “(A) IN GENERAL.—In the case of any
5 egregious failure to meet any requirement of
6 this subsection with respect to any plan amend-
7 ment, the provisions of the applicable pension
8 plan shall be applied as if such plan amendment
9 entitled all applicable individuals to the greater
10 of—

11 “(i) the benefits to which they would
12 have been entitled without regard to such
13 amendment, or

14 “(ii) the benefits under the plan with
15 regard to such amendment.

16 “(B) EGREGIOUS FAILURE.—For purposes
17 of subparagraph (A), there is an egregious fail-
18 ure to meet the requirements of this subsection
19 if such failure is—

20 “(i) an intentional failure (including
21 any failure to promptly provide the re-
22 quired notice or information after the plan
23 administrator discovers an unintentional
24 failure to meet the requirements of this
25 subsection),

1 “(ii) a failure to provide most of the
2 individuals with most of the information
3 they are entitled to receive under this sub-
4 section, or

5 “(iii) a failure which is determined to
6 be egregious under regulations prescribed
7 by the Secretary of the Treasury.

8 “(C) EXCISE TAX.—For excise tax on fail-
9 ure to meet requirements, see section 4980F of
10 the Internal Revenue Code of 1986.

11 “(6) SPECIAL RULES.—

12 “(A) PLAIN LANGUAGE.—The notice re-
13 quired under paragraph (1) shall be written in
14 a manner calculated to be understood by the av-
15 erage plan participant who is an applicable indi-
16 vidual.

17 “(B) NOTICE TO DESIGNEES.—The notice
18 and information required to be provided under
19 this subsection may be provided to a person
20 designated, in writing, by the person to which
21 it would otherwise be provided.

22 “(7) ALTERNATIVE METHODS OF COMPLIANCE
23 WITH ENHANCED DISCLOSURE REQUIREMENTS IN
24 CERTAIN CASES.—The Secretary of the Treasury
25 shall prescribe such regulations as may be necessary

1 to carry out this subsection. The Secretary of the
2 Treasury may—

3 “(A) prescribe alternative or simplified
4 methods of complying with paragraphs (3) and
5 (4) in situations where—

6 “(i) there is no fundamental change in
7 the manner in which the accrued benefit of
8 an applicable individual is determined
9 under the plan, and

10 “(ii) such other methods are adequate
11 to reasonably inform plan participants who
12 are applicable individuals of the impact of
13 the reductions,

14 “(B) reduce the advance notice period in
15 paragraph (1)(A) from 45 days to 15 days be-
16 fore the effective date of the amendment for
17 cases in which compliance with the 45-day ad-
18 vance notice requirement would be unduly bur-
19 densome because the amendment is contingent
20 on a merger, acquisition, disposition, or other
21 similar transaction involving plan participants
22 who are applicable individuals or because 45
23 days advance notice is otherwise impracticable,

1 “(C) permit the comparison of benefits
2 under paragraph (3)(B)(i) to be based on a
3 form of payment other than a life annuity, or

4 “(D) specify actuarial assumptions that
5 are deemed to be reasonable for purposes of the
6 benefit comparisons under paragraph (3)(B)(i).

7 “(8) APPLICABLE INDIVIDUAL.—For purposes
8 of this subsection, the term ‘applicable individual’
9 means, with respect to any plan amendment—

10 “(A) each participant in the plan, and

11 “(B) each beneficiary who is an alternate
12 payee (within the meaning of section
13 206(d)(3)(K)) under a qualified domestic rela-
14 tions order (within the meaning of section
15 206(d)(3)(B)(i)),

16 whose future benefit accruals under the plan may
17 reasonably be expected to be reduced by such plan
18 amendment.

19 “(9) TERMS RELATING TO PLANS.—For pur-
20 poses of this subsection—

21 “(A) APPLICABLE PENSION PLAN.—The
22 term ‘applicable pension plan’ means—

23 “(i) a defined benefit plan, or

1 “(ii) an individual account plan which
 2 is subject to the funding standards of sec-
 3 tion 302.

4 “(B) LARGE APPLICABLE PENSION
 5 PLAN.—The term ‘large applicable pension
 6 plan’ means an applicable pension plan which
 7 had 100 or more active participants as of the
 8 last day of the plan year preceding the plan
 9 year in which the plan amendment becomes ef-
 10 fective.”

11 (b) INDIVIDUAL STATEMENTS.—Section 105 of the
 12 Employee Retirement Income Security Act of 1974 (29
 13 U.S.C. 1025) is amended by adding at the end the fol-
 14 lowing new subsection:

15 “(e)(1) The plan administrator of a large applicable
 16 pension plan shall furnish an individual statement de-
 17 scribed in paragraph (2) to each individual—

18 “(A) who receives, or is entitled to receive,
 19 under section 204(h) the information described in
 20 paragraph (3) thereof from such administrator, and

21 “(B) who requests in writing such a statement
 22 from such administrator.

23 “(2) The statement described in this paragraph is a
 24 statement which provides information which is substan-
 25 tially the same as the information in the illustrative exam-

1 ples described in section 204(h)(3)(B) but which is based
 2 on data specific to the requesting individual and, if the
 3 individual so requests, information as of 1 other future
 4 date not included in such examples.

5 “(3) Paragraph (1) shall apply only to requests made
 6 during the 12-month period that begins on the later of
 7 the effective date of the amendment to which it relates
 8 or the date the notice described in section 204(h)(2) is
 9 provided. In no case shall an individual be entitled under
 10 this subsection to receive more than one such statement
 11 with respect to an amendment.

12 “(4) Notwithstanding section 502(c)(1), the state-
 13 ment required by paragraph (1) shall be treated as timely
 14 furnished if furnished on or before—

15 “(A) the date which is 90 days after the effec-
 16 tive date of the plan amendment to which is relates,
 17 or

18 “(B) such later date as may be permitted by
 19 the Secretary of Labor.

20 “(5) Any term used in this subsection which is used
 21 in section 204(h) shall have the meaning given such term
 22 by such section.

23 “(6) A statement under this subsection shall not be
 24 taken into account for purposes of subsection (b).”

1 **SEC. 3. EXCISE TAX ON FAILURE TO PROVIDE NOTICE BY**
 2 **DEFINED BENEFIT PLANS SIGNIFICANTLY**
 3 **REDUCING FUTURE BENEFIT ACCRUALS.**

4 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
 5 enue Code of 1986 (relating to qualified pension, etc.,
 6 plans) is amended by adding at the end the following new
 7 section:

8 **“SEC. 4980F. FAILURE OF DEFINED BENEFIT PLANS REDUC-**
 9 **ING BENEFIT ACCRUALS TO SATISFY NOTICE**
 10 **REQUIREMENTS.**

11 “(a) IMPOSITION OF TAX.—There is hereby imposed
 12 a tax on the failure of a plan administrator of an applica-
 13 ble pension plan to meet the requirements of subsection
 14 (e) with respect to any applicable individual.

15 “(b) AMOUNT OF TAX.—

16 “(1) IN GENERAL.—The amount of the tax im-
 17 posed by subsection (a) on any failure with respect
 18 to any applicable individual shall be \$100 for each
 19 day in the noncompliance period with respect to such
 20 failure.

21 “(2) NONCOMPLIANCE PERIOD.—For purposes
 22 of this section, the term ‘noncompliance period’
 23 means, with respect to any failure, the period begin-
 24 ning on the date the failure first occurs and ending
 25 on the date the failure is corrected.

26 “(c) LIMITATIONS ON AMOUNT OF TAX.—

1 “(1) OVERALL LIMITATION FOR UNINTEN-
2 TIONAL FAILURES.—

3 “(A) IN GENERAL.—In the case of failures
4 that are due to reasonable cause and not to
5 willful neglect, the tax imposed by subsection
6 (a) for failures during the taxable year of the
7 employer (or, in the case of a multiemployer
8 plan, the taxable year of the trust forming part
9 of the plan) shall not exceed \$500,000
10 (\$1,000,000 in the case of a large applicable
11 pension plan).

12 “(B) TAXABLE YEARS IN THE CASE OF
13 CERTAIN CONTROLLED GROUPS.—For purposes
14 of this paragraph, if all persons who are treated
15 as a single employer for purposes of this section
16 do not have the same taxable year, the taxable
17 years taken into account shall be determined
18 under principles similar to the principles of sec-
19 tion 1561.

20 “(2) WAIVER BY SECRETARY.—In the case of a
21 failure which is due to reasonable cause and not to
22 willful neglect, the Secretary may waive part or all
23 of the tax imposed by subsection (a) to the extent
24 that the payment of such tax would be excessive rel-
25 ative to the failure involved.

1 “(d) LIABILITY FOR TAX.—The following shall be lia-
2 ble for the tax imposed by subsection (a):

3 “(1) In the case of a plan other than a multi-
4 employer plan, the employer.

5 “(2) In the case of a multiemployer plan, the
6 plan.

7 “(e) NOTICE REQUIREMENTS FOR PENSION PLAN
8 AMENDMENTS REDUCING ACCRUALS.—

9 “(1) IN GENERAL.—If an applicable pension
10 plan is amended so as to provide for a significant re-
11 duction in the rate of future benefit accrual of 1 or
12 more applicable individuals, the plan administrator
13 shall—

14 “(A) not later than the 45th day before
15 the effective date of the amendment, provide
16 the written notice described in paragraph (2) to
17 each applicable individual (and to each em-
18 ployee organization (as defined in section 3(4)
19 of the Employee Retirement Income Security
20 Act of 1974) representing applicable individ-
21 uals), and

22 “(B) in the case of a large applicable pen-
23 sion plan—

1 “(i) include in the notice under para-
 2 graph (2) the additional information de-
 3 scribed in paragraph (3), and

4 “(ii) make available the information
 5 described in paragraph (4) in accordance
 6 with such paragraph.

7 “(2) BASIC WRITTEN NOTICE.—The notice
 8 under paragraph (1) shall include a summary of the
 9 important terms of the amendment, including—

10 “(A) the effective date of the amendment,

11 “(B) a statement that the amendment is
 12 expected to significantly reduce the rate of fu-
 13 ture benefit accrual,

14 “(C) a description of the classes of applica-
 15 ble individuals to whom the amendment applies,
 16 and

17 “(D) a description of how the amendment
 18 significantly reduces the rate of future benefit
 19 accrual.

20 “(3) ADDITIONAL INFORMATION TO BE PRO-
 21 VIDED BY LARGE APPLICABLE PENSION PLANS.—

22 “(A) IN GENERAL.—The information de-
 23 scribed in this paragraph is—

24 “(i) a description of the plan’s benefit
 25 formulas (including formulas for deter-

mining early retirement benefits) both before and after the amendment and an explanation of the effect of the different formulas on applicable individuals,

“(ii) an explanation of the circumstances (if any) under which (for appropriate categories of applicable individuals) the amendment is reasonably expected to result in a temporary period after the effective date of the amendment during which there are no or minimal accruals,

“(iii) illustrative examples of normal or early retirement benefits meeting the requirements of subparagraph (B), and

“(iv) notice of each applicable individual’s right to request, and of the procedures for requesting, the information required to be provided under paragraph (4) and under section 105(e) of Employee Retirement Income Security Act of 1974.

“(B) ILLUSTRATIVE EXAMPLES.—Illustrative examples meet the requirements of this subparagraph if such examples illustrate the adverse effects of the plan amendment. Such

examples shall be prepared by the plan administrator in accordance with regulations prescribed by the Secretary, and such regulations shall require that the examples—

“(i) reflect fairly the different categories of applicable individuals who are similarly affected by the plan amendment after consideration of all relevant factors,

“(ii) show a comparison of benefits for each such category of applicable individuals under the plan (as in effect before and after the effective date) at appropriate future dates, and

“(iii) illustrate any temporary period described in subparagraph (A)(ii).

Such comparison shall be based on benefits in the form of a life annuity and on actuarial assumptions each of which is reasonable (and is so certified by an enrolled actuary) when applied to all participants in the plan.

“(4) SUPPORTING INFORMATION RELATING TO CALCULATION OF BENEFITS.—

“(A) IN GENERAL.—Each individual who receives or who is entitled to receive the information described in paragraph (3) may (after

1 so receiving or becoming so entitled) request
 2 the plan administrator to provide the informa-
 3 tion described in subparagraph (B).

4 “(B) INFORMATION.—The plan adminis-
 5 trator shall, within 15 days after the date on
 6 which a request under subparagraph (A) is
 7 made, provide to the individual information (in-
 8 cluding benefit formulas and actuarial factors)
 9 which is sufficient—

10 “(i) to confirm the benefit compari-
 11 sons in the illustrative examples described
 12 in paragraph (3)(B), and

13 “(ii) to enable the individual to use
 14 the individual’s own personal information
 15 to make calculations of the individual’s
 16 own benefits which are similar to the cal-
 17 culations made in such examples.

18 Nothing in this subsection shall be construed to
 19 require the plan administrator to provide to an
 20 individual such individual’s personal informa-
 21 tion for purposes of clause (ii).

22 “(C) TIME LIMITATION ON REQUESTS.—
 23 This paragraph shall apply only to requests
 24 made during the 12-month period that begins
 25 on the later of the effective date of the amend-

ment to which it relates or the date the notice described in paragraph (2) is provided.

“(5) SPECIAL RULES.—

“(A) PLAIN LANGUAGE.—The notice required under paragraph (1) shall be written in a manner calculated to be understood by the average plan participant who is an applicable individual.

“(B) NOTICE TO DESIGNEES.—The notice or information required to be provided under this subsection may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

“(6) ALTERNATIVE METHODS OF COMPLIANCE WITH ENHANCED DISCLOSURE REQUIREMENTS IN CERTAIN CASES.—The Secretary shall prescribe such regulations as may be necessary to carry out this subsection. The Secretary may—

“(A) prescribe alternative or simplified methods of complying with paragraphs (3) and (4) in situations where—

“(i) there is no fundamental change in the manner in which the accrued benefit of an applicable individual is determined under the plan, and

1 “(ii) such other methods are adequate
2 to reasonably inform plan participants who
3 are applicable individuals of the impact of
4 the reductions,

5 “(B) reduce the advance notice period in
6 paragraph (1)(A) from 45 days to 15 days be-
7 fore the effective date of the amendment for
8 cases in which compliance with the 45-day ad-
9 vance notice requirement would be unduly bur-
10 densome because the amendment is contingent
11 on a merger, acquisition, disposition, or other
12 similar transaction involving plan participants
13 who are applicable individuals or because 45
14 days advance notice is otherwise impracticable,

15 “(C) permit the comparison of benefits
16 under paragraph (3)(B)(i) to be based on a
17 form of payment other than a life annuity, or

18 “(D) specify actuarial assumptions that
19 are deemed to be reasonable for purposes of the
20 benefit comparisons under paragraph (3)(B)(i).

21 “(7) APPLICABLE INDIVIDUAL.—For purposes
22 of this subsection, the term ‘applicable individual’
23 means, with respect to any plan amendment—

24 “(A) each participant in the plan, and

1 “(B) each beneficiary who is an alternate
 2 payee (within the meaning of section 414(p)(8))
 3 under a qualified domestic relations order
 4 (within the meaning of section 414(p)(1)),
 5 whose future benefit accruals under the plan may
 6 reasonably be expected to be reduced by such plan
 7 amendment.

8 “(8) TERMS RELATING TO PLANS.—For pur-
 9 poses of this subsection—

10 “(A) APPLICABLE PENSION PLAN.—The
 11 term ‘applicable pension plan’ means—

12 “(i) a defined benefit plan, or

13 “(ii) an individual account plan which
 14 is subject to the funding standards of sec-
 15 tion 412.

16 Such term shall not include any governmental
 17 plan (within the meaning of section 414(d)) or
 18 any church plan (within the meaning of section
 19 414(e)) with respect to which the election pro-
 20 vided by section 410(d) has not been made.

21 “(B) LARGE APPLICABLE PENSION
 22 PLAN.—The term ‘large applicable pension
 23 plan’ means an applicable pension plan which
 24 had 100 or more active participants as of the
 25 last day of the plan year preceding the plan

1 year in which the plan amendment becomes ef-
 2 fective.”

3 (b) CONFORMING AMENDMENT.—The table of sec-
 4 tions for chapter 43 of such Code is amended by adding
 5 at the end the following new item:

“Sec. 4980F. Failure of defined benefit plans reducing benefit ac-
 cruals to satisfy notice requirements.”

6 **SEC. 4. EFFECTIVE DATES.**

7 (a) IN GENERAL.—The amendments made by this
 8 Act shall apply to plan amendments taking effect after the
 9 date of the enactment of this Act.

10 (b) SPECIAL RULES.—

11 (1) IN GENERAL.—The amendments made by
 12 this Act shall not apply to any plan amendment for
 13 which there was written notice before July 12, 1999,
 14 which was reasonably expected to notify substan-
 15 tially all of the plan participants or their representa-
 16 tives.

17 (2) TRANSITION.—Until such time as the Sec-
 18 retary of the Treasury issues regulations under sec-
 19 tion 4980F(e) (3) and (4) of the Internal Revenue
 20 Code of 1986 and section 204(h) (3) and (4) of the
 21 Employee Retirement Income Security Act of 1974
 22 (as added by the amendments made by this section),
 23 a plan shall be treated as meeting the requirements

1 of such sections if it makes a good faith effort to
2 comply with such requirements.

3 (3) NOTICE AND INFORMATION NOT REQUIRED
4 TO BE FURNISHED BEFORE 120TH DAY AFTER EN-
5 ACTMENT.—The period for providing any notice or
6 information required by the amendments made by
7 this section shall not end before the date which is
8 120 days after the date of the enactment of this Act.

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