

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4367

To amend the Internal Revenue Code of 1986 and title I of the Employee Retirement Income Security Act of 1974 with regard to pension integration, participation, and vesting requirements, to provide for division of pension benefits upon divorce unless otherwise provided in qualified domestic relations orders, to provide for studies relating to cost-of-living adjustments and pension portability, and to clarify the continued availability, under provisions governing domestic relations orders, of remedies relating to matters treated in such orders entered before 1985.

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IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1994

Mrs. KENNELLY introduced the following bill; which was referred jointly to the Committees on Ways and Means and Education and Labor

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## A BILL

To amend the Internal Revenue Code of 1986 and title I of the Employee Retirement Income Security Act of 1974 with regard to pension integration, participation, and vesting requirements, to provide for division of pension benefits upon divorce unless otherwise provided in qualified domestic relations orders, to provide for studies relating to cost-of-living adjustments and pension portability, and to clarify the continued availability, under provisions governing domestic relations orders, of remedies relating to matters treated in such orders entered before 1985.

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 Reform Act  
5 of 1993”.

6 **SEC. 2. PENSION INTEGRATION RULES.**

7        (a) APPLICABILITY OF NEW INTEGRATION RULES  
8 EXTENDED TO ALL EXISTING ACCRUED BENEFITS.—  
9 Notwithstanding subsection (c)(1) of section 1111 of the  
10 Tax Reform Act of 1986 (relating to effective date of ap-  
11 plication of nondiscrimination rules to integrated plans)  
12 (100 Stat. 2440), effective for plan years beginning after  
13 the date of the enactment of this Act, the amendments  
14 made by subsection (a) of such section 1111 shall also  
15 apply to benefits attributable to plan years beginning on  
16 or before December 31, 1988.

17        (b) INTEGRATION DISALLOWED FOR SIMPLIFIED  
18 EMPLOYEE PENSIONS.—

19            (1) IN GENERAL.—Subparagraph (D) of section  
20 408(k)(3) of the Internal Revenue Code of 1986 (re-  
21 lating to permitted disparity under rules limiting  
22 discrimination under simplified employee pensions)  
23 is repealed.

1           (2) CONFORMING AMENDMENT.—Subparagraph  
2           (C) of such section 408(k)(3) is amended by striking  
3           “and except as provided in subparagraph (D),”.

4           (3) EFFECTIVE DATE.—The amendments made  
5           by this subsection shall apply with respect to taxable  
6           years beginning on or after January 1, 1994.

7           (c) EVENTUAL REPEAL OF INTEGRATION RULES.—  
8           Effective for plan years beginning on or after January 1,  
9           2002—

10           (1) subparagraphs (C) and (D) of section  
11           401(a)(5) of the Internal Revenue Code of 1986 (re-  
12           lating to pension integration exceptions under non-  
13           discrimination requirements for qualification) are re-  
14           pealed, and subparagraph (E) of such section  
15           401(a)(5) is redesignated as subparagraph (C); and

16           (2) subsection (l) of section 401 of such Code  
17           (relating to nondiscriminatory coordination of de-  
18           fined contribution plans with OASDI) is repealed.

19   **SEC. 3. APPLICATION OF MINIMUM COVERAGE REQUIRE-**  
20                   **MENTS WITH RESPECT TO SEPARATE LINES**  
21                   **OF BUSINESS.**

22           (a) IN GENERAL.—Subsection (b) of section 410 of  
23           the Internal Revenue Code of 1986 (relating to minimum  
24           coverage requirements) is amended—

1 (1) in paragraph (1), by striking “A trust” and  
2 inserting “In any case in which the employer with  
3 respect to a plan is treated, under section 414(r), as  
4 operating separate lines of business for a plan year,  
5 a trust”, and by inserting “for such plan year” after  
6 “requirements”; and

7 (2) by redesignating paragraphs (3) through  
8 (6) as paragraphs (4) through (7), respectively and  
9 by inserting after paragraph (2) the following new  
10 paragraph:

11 “(3) SPECIAL RULE WHERE EMPLOYER OPER-  
12 ATES SINGLE LINE OF BUSINESS.—In any case in  
13 which the employer with respect to a plan is not  
14 treated, under section 414(r), as operating separate  
15 lines of business for a plan year, a trust shall not  
16 constitute a qualified trust under section 401(a) un-  
17 less such trust is designated by the employer as part  
18 of a plan which benefits all employees of the  
19 employer.”.

20 (b) LIMITATION ON LINE OF BUSINESS EXCEP-  
21 TION.—Paragraph (6) of section 410(b) of such Code (as  
22 redesignated by subsection (a)(2) of this section) is  
23 amended by inserting “other than paragraph (1)(A)” after  
24 “this subsection”.

1 **SEC. 4. ELIMINATION OF SPECIAL VESTING RULE FOR MUL-**  
2 **TIEMPLOYER PLANS.**

3 (a) INTERNAL REVENUE CODE AMENDMENT.—Para-  
4 graph (2) of section 411(a) of the Internal Revenue Code  
5 of 1986 (relating to minimum vesting standards) is  
6 amended—

7 (1) by striking “subparagraph (A), (B), or (C)”  
8 and inserting “subparagraph (A) or (B)”; and

9 (2) by striking subparagraph (C).

10 (b) ERISA AMENDMENT.—Paragraph (2) of section  
11 203(a)(2) of the Employee Retirement Income Security  
12 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended—

13 (1) by striking “subparagraph (A), (B), or (C)”  
14 and inserting “subparagraph (A) or (B)”; and

15 (2) by striking subparagraph (C).

16 **SEC. 5. DIVISION OF PENSION BENEFITS UPON DIVORCE.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE  
18 CODE OF 1986.—

19 (1) IN GENERAL.—Subsection (a) of section  
20 401 of the Internal Revenue Code of 1986 (relating  
21 to requirements for qualification) is amended—

22 (A) by inserting after paragraph (31) the  
23 following new paragraph:

24 “(32) DIVISION OF PENSION BENEFITS UPON  
25 DIVORCE.—

1           “(A) IN GENERAL.—In the case of a di-  
2           vorce of a participant in a pension plan from a  
3           spouse who is, immediately before the divorce,  
4           a beneficiary under the plan, a trust forming a  
5           part of such plan shall not constitute a quali-  
6           fied trust under this section unless the plan  
7           provides that at least 50 percent of the marital  
8           share of the accrued benefit of the participant  
9           under the plan ceases to be an accrued benefit  
10          of such participant and becomes an accrued  
11          benefit of such divorced spouse, determined and  
12          payable upon the earlier of the retirement of  
13          the participant, the participant’s death, or the  
14          termination of the plan, except to the extent  
15          that a qualified domestic relations order in con-  
16          nection with such divorce provides otherwise.

17          “(B) LIMITATION.—Subparagraph (A)  
18          shall not be construed—

19                  “(i) to require a plan to provide any  
20                  type or form of benefit, or any option, not  
21                  otherwise provided under the plan,

22                  “(ii) to require the plan to provide in-  
23                  creased benefits (determined on the basis  
24                  of actuarial value),

1           “(iii) to require the payment of bene-  
2           fits to the divorced spouse which are re-  
3           quired to be paid to another individual in  
4           accordance with this paragraph or pursu-  
5           ant to a domestic relations order previously  
6           determined to be a qualified domestic rela-  
7           tions order, or

8           “(iv) to require payment of benefits to  
9           the divorced spouse in the form of a quali-  
10          fied joint and survivor annuity to the di-  
11          vorced spouse and his or her subsequent  
12          spouse.

13          “(C) DEFINITIONS.—For purposes of this  
14          paragraph—

15               “(i) DOMESTIC RELATIONS ORDER;  
16               QUALIFIED DOMESTIC RELATIONS  
17               ORDER.—The terms ‘domestic relations  
18               order’ and ‘qualified domestic relations  
19               order’ shall have the meanings provided in  
20               section 414(p).

21               “(ii) MARITAL SHARE.—The term  
22               ‘marital share’ means, in connection with  
23               an accrued benefit under a pension plan,  
24               the product derived by multiplying—

1 “(I) the actuarial present value  
2 of the accrued benefit, by

3 “(II) a fraction, the numerator of  
4 which is the period of time, during the  
5 marriage between the spouse and the  
6 participant in the plan, which con-  
7 stitutes creditable service by the par-  
8 ticipant under the plan, and the de-  
9 nominator of which is the total period  
10 of time which constitutes creditable  
11 service by the participant under the  
12 plan.

13 “(iii) QUALIFIED JOINT AND SURVI-  
14 VOR ANNUITY.—The term ‘qualified joint  
15 and survivor annuity’ has the meaning pro-  
16 vided in section 417(b).

17 “(D) REGULATIONS.—In prescribing regu-  
18 lations under this paragraph, the Secretary  
19 shall consult with the Secretary of Labor.”; and

20 (B) in the last sentence, by striking “and  
21 (20)” and inserting “(20), and (32)”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Subparagraph (B) of section  
24 401(a)(13) of such Code (relating to special  
25 rules for domestic relations orders) is amended

1 by inserting “or if such creation, assignment, or  
2 recognition pursuant to such order is necessary  
3 for compliance with the requirements of para-  
4 graph (32)” before the period.

5 (B) Subsection (p) of section 414 of such  
6 Code (defining qualified domestic relations or-  
7 ders) is amended—

8 (i) in paragraph (3)(C), by inserting  
9 “or to a divorced spouse of the participant  
10 in connection with a previously occurring  
11 divorce as required under section  
12 401(a)(32)” before the period; and

13 (ii) in paragraph (7)(C), by striking  
14 “if there had been no order” and inserting  
15 “in accordance with section 401(a)(32) as  
16 if there had been no qualified domestic re-  
17 lations order”.

18 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
19 INCOME SECURITY ACT OF 1974.—

20 (1) IN GENERAL.—Section 206 of Employee  
21 Retirement Income Security Act of 1974 (29 U.S.C.  
22 1056) is amended by adding at the end the following  
23 new subsection:

24 “(e)(1) In the case of a divorce of a participant in  
25 a pension plan from a spouse who is, immediately before

1 the divorce, a beneficiary under the plan, the plan shall  
2 provide that at least 50 percent of the marital share of  
3 the accrued benefit of the participant under the plan  
4 ceases to be an accrued benefit of such participant and  
5 becomes an accrued benefit of such divorced spouse, deter-  
6 mined and payable upon the earlier of the retirement of  
7 the participant, the participant's death, or the termination  
8 of the plan, except to the extent that a qualified domestic  
9 relations order in connection with such divorce provides  
10 otherwise.

11 “(2) Paragraph (1) shall not be construed—

12 “(A) to require a plan to provide any type or  
13 form of benefit, or any option, not otherwise pro-  
14 vided under the plan,

15 “(B) to require the plan to provide increased  
16 benefits (determined on the basis of actuarial value),

17 “(C) to require the payment of benefits to the  
18 divorced spouse which are required to be paid to an-  
19 other individual in accordance with this subsection  
20 or pursuant to a domestic relation order previously  
21 determined to be a qualified domestic relations  
22 order, or

23 “(D) to require payment of benefits to the di-  
24 vorced spouse in the form of a joint and survivor an-

1 nuity to the divorced spouse and his or her subse-  
2 quent spouse.

3 “(3) For purposes of this subsection—

4 “(A) The terms ‘domestic relations order’ and  
5 ‘qualified domestic relations order’ shall have the  
6 meanings provided in subsection (d)(3)(B).

7 “(B) The term ‘marital share’ means, in con-  
8 nection with an accrued benefit under a pension  
9 plan, the product derived by multiplying—

10 “(i) the actuarial present value of the ac-  
11 crued benefit, by

12 “(ii) a fraction—

13 “(I) the numerator of which is the pe-  
14 riod of time, during the marriage between  
15 the spouse and the participant in the plan,  
16 which constitutes creditable service by the  
17 participant under the plan, and

18 “(II) the denominator of which is the  
19 total period of time which constitutes cred-  
20 itable service by the participant under the  
21 plan.

22 “(C) The term ‘qualified joint and survivor an-  
23 nuity’ shall have the meaning provided in section  
24 205(d).

1 “(4) In prescribing regulations under this subsection,  
2 the Secretary shall consult with the Secretary of the  
3 Treasury.”.

4 (2) CONFORMING AMENDMENTS.—Section  
5 206(d) of such Act (29 U.S.C. 1056(d)) is amend-  
6 ed—

7 (A) in the first sentence of paragraph (3),  
8 by inserting “or if such creation, assignment, or  
9 recognition pursuant to such order is necessary  
10 for compliance with the requirements of sub-  
11 section (e)” before the period;

12 (B) in paragraph (3)(D)(iii), by inserting  
13 “or to a divorced spouse of the participant in  
14 connection with a previously occurring divorce  
15 as required under subsection (e)” before the pe-  
16 riod; and

17 (C) in paragraph (3)(H)(iii), by striking  
18 “if there had been no order” and inserting “in  
19 accordance with subsection (e) as if there had  
20 been no qualified domestic relations order”.

21 **SEC. 6. EFFECTIVE DATES.**

22 (a) IN GENERAL.—Except as provided in subsection  
23 (b), the amendments made by this Act, other than section  
24 2, shall apply with respect to plan years beginning on or  
25 after January 1, 1995, and the amendments made by sec-

1 tion 5 shall apply only with respect to divorces becoming  
2 final in such plan years.

3 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED  
4 PLANS.—In the case of a plan maintained pursuant to 1  
5 or more collective bargaining agreements between em-  
6 ployee representatives and 1 or more employers ratified  
7 on or before the date of the enactment of this Act, sub-  
8 section (a) shall be applied to benefits pursuant to, and  
9 individuals covered by, any such agreement by substituting  
10 for “January 1, 1995” the date of the commencement of  
11 the first plan year beginning on or after the earlier of—

12 (1) the later of—

13 (A) January 1, 1995, or

14 (B) the date on which the last of such col-  
15 lective bargaining agreements terminates (de-  
16 termined without regard to any extension there-  
17 of after the date of the enactment of this Act),

18 or

19 (2) January 1, 1997.

20 (c) PLAN AMENDMENTS.—If any amendment made  
21 by this Act requires an amendment to any plan, such plan  
22 amendment shall not be required to be made before the  
23 first plan year beginning on or after January 1, 1995, if—

24 (1) during the period after such amendment  
25 made by this Act takes effect and before such first

1 plan year, the plan is operated in accordance with  
2 the requirements of such amendment made by this  
3 Act, and

4 (2) such plan amendment applies retroactively  
5 to the period after such amendment made by this  
6 Act takes effect and such first plan year.

7 A plan shall not be treated as failing to provide definitely  
8 determinable benefits or contributions, or to be operated  
9 in accordance with the provisions of the plan, merely be-  
10 cause it operates in accordance with this subsection.

11 **SEC. 7. CLARIFICATION OF CONTINUED AVAILABILITY OF**  
12 **REMEDIES RELATING TO MATTERS TREATED**  
13 **IN DOMESTIC RELATIONS ORDERS ENTERED**  
14 **BEFORE 1985.**

15 (a) IN GENERAL.—In any case in which—

16 (1) under a prior domestic relations order en-  
17 tered before January 1, 1985, in an action for di-  
18 vorce—

19 (A) the right of a spouse under a pension  
20 plan to an accrued benefit under such plan was  
21 not divided between spouses,

22 (B) any right of a spouse with respect to  
23 such an accrued benefit was waived without the  
24 informed consent of such spouse, or

1 (C) the right of a spouse as a participant  
2 under a pension plan to an accrued benefit  
3 under such plan was divided so that the other  
4 spouse received less than such other spouse's  
5 pro rata share of the accrued benefit under the  
6 plan, or

7 (2) a court of competent jurisdiction determines  
8 that any further action is appropriate with respect  
9 to any matter to which a prior domestic relations  
10 order entered before such date applies,

11 nothing in the provisions of section 104, 204, or 303 of  
12 the Retirement Equity Act of 1984 (Public Law 98-397)  
13 or the amendments made thereby shall be construed to  
14 require or permit the treatment, for purposes of such pro-  
15 visions, of a domestic relations order, which is entered on  
16 or after the date of the enactment of this Act and which  
17 supercedes, amends the terms of, or otherwise affects such  
18 prior domestic relations order, as other than a qualified  
19 domestic relations order solely because such prior domestic  
20 relations order was entered before January 1, 1985.

21 (b) DEFINITIONS.—For purposes of this section—

22 (1) IN GENERAL.—Terms used in this section  
23 which are defined in section 3 of the Employee Re-  
24 tirement Income Security Act of 1974 (29 U.S.C.

1 1002) shall have the meanings provided such terms  
2 by such section.

3 (2) PRO RATA SHARE.—The term “pro rata  
4 share” of a spouse means, in connection with an ac-  
5 crued benefit under a pension plan, 50 percent of  
6 the product derived by multiplying—

7 (A) the actuarial present value of the ac-  
8 crued benefit, by

9 (B) a fraction—

10 (i) the numerator of which is the pe-  
11 riod of time, during the marriage between  
12 the spouse and the participant in the plan,  
13 which constitutes creditable service by the  
14 participant under the plan, and

15 (ii) the denominator of which is the  
16 total period of time which constitutes cred-  
17 itable service by the participant under the  
18 plan.

19 (3) PLAN.—All pension plans in which a person  
20 has been a participant shall be treated as one plan  
21 with respect to such person.

22 **SEC. 8. SECTION 2 OF RAILROAD RETIREMENT ACT OF 1974**  
23 **IS AMENDED—**

24 (1) in subsection (c)(4), by striking “(A) is entitled  
25 to an annuity under subsection (a)(1) and (B)”

1       (2) in subsection (e)(5), by striking “or divorced  
2 wife” the second place it appears.

○

HR 4367 IH—2