

104TH CONGRESS
1ST SESSION

H. R. 1048

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, to clarify the continued availability, under provisions governing domestic relations orders, of remedies relating to matters treated in such orders entered before 1985, and to provide for entitlement of divorced spouses under the Railroad Retirement Act of 1974 independent of the actual entitlement of the employee.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1995

Mrs. KENNELLY introduced the following bill; which was referred to the Committee on Ways and Means and, in addition, to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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, to clarify the continued availability, under provisions governing domestic relations orders, of remedies

relating to matters treated in such orders entered before 1985, and to provide for entitlement of divorced spouses under the Railroad Retirement Act of 1974 independent of the actual entitlement of the employee.

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 1995”.

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

1 discrimination under simplified employee pensions)
2 is repealed.

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

6 (3) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply with respect to taxable
8 years beginning on or after January 1, 1996.

9 (c) EVENTUAL REPEAL OF INTEGRATION RULES.—
10 Effective for plan years beginning on or after January 1,
11 2003—

12 (1) subparagraphs (C) and (D) of section
13 401(a)(5) of the Internal Revenue Code of 1986 (re-
14 lating to pension integration exceptions under non-
15 discrimination requirements for qualification) are re-
16 pealed, and subparagraph (E) of such section
17 401(a)(5) is redesignated as subparagraph (C); and

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20 fined contribution plans with OASDI) is repealed.

1 **SEC. 3. APPLICATION OF MINIMUM COVERAGE REQUIRE-**
2 **MENTS WITH RESPECT TO SEPARATE LINES**
3 **OF BUSINESS.**

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

7 (1) in paragraph (1), by striking “A trust” and
8 inserting “In any case in which the employer with
9 respect to a plan is treated, under section 414(r), as
10 operating separate lines of business for a plan year,
11 a trust”, and by inserting “for such plan year” after
12 “requirements”; and

13 (2) by redesignating paragraphs (3) through
14 (6) as paragraphs (4) through (7), respectively and
15 by inserting after paragraph (2) the following new
16 paragraph:

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

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

6 **SEC. 4. ELIMINATION OF SPECIAL VESTING RULE FOR MUL-**
7 **TIEMPLOYER PLANS.**

8 (a) INTERNAL REVENUE CODE AMENDMENT.—Para-
9 graph (2) of section 411(a) of the Internal Revenue Code
10 of 1986 (relating to minimum vesting standards) is
11 amended—

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

14 (2) by striking subparagraph (C).

15 (b) ERISA AMENDMENT.—Paragraph (2) of section
16 203(a)(2) of the Employee Retirement Income Security
17 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended—

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

20 (2) by striking subparagraph (C).

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

22 (a) AMENDMENTS TO THE INTERNAL REVENUE
23 CODE OF 1986.—

1 (1) IN GENERAL.—Subsection (a) of section
2 401 of the Internal Revenue Code of 1986 (relating
3 to requirements for qualification) is amended—

4 (A) by inserting after paragraph (31) the
5 following new paragraph:

6 “(32) DIVISION OF PENSION BENEFITS UPON
7 DIVORCE.—

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

24 “(B) LIMITATION.—Subparagraph (A)
25 shall not be construed—

1 “(i) to require a plan to provide any
2 type or form of benefit, or any option, not
3 otherwise provided under the plan,

4 “(ii) to require the plan to provide in-
5 creased benefits (determined on the basis
6 of actuarial value),

7 “(iii) to require the payment of bene-
8 fits to the divorced spouse which are re-
9 quired to be paid to another individual in
10 accordance with this paragraph or pursu-
11 ant to a domestic relations order previously
12 determined to be a qualified domestic rela-
13 tions order, or

14 “(iv) to require payment of benefits to
15 the divorced spouse in the form of a quali-
16 fied joint and survivor annuity to the di-
17 vorced spouse and his or her subsequent
18 spouse.

19 “(C) DEFINITIONS.—For purposes of this
20 paragraph—

21 “(i) DOMESTIC RELATIONS ORDER;
22 QUALIFIED DOMESTIC RELATIONS
23 ORDER.—The terms ‘domestic relations
24 order’ and ‘qualified domestic relations

1 order' shall have the meanings provided in
2 section 414(p).

3 “(ii) MARITAL SHARE.—The term
4 ‘marital share’ means, in connection with
5 an accrued benefit under a pension plan,
6 the product derived by multiplying—

7 “(I) the actuarial present value
8 of the accrued benefit, by

9 “(II) a fraction, the numerator of
10 which is the period of time, during the
11 marriage between the spouse and the
12 participant in the plan, which con-
13 stitutes creditable service by the par-
14 ticipant under the plan, and the de-
15 nominator of which is the total period
16 of time which constitutes creditable
17 service by the participant under the
18 plan.

19 “(iii) QUALIFIED JOINT AND SURVI-
20 VOR ANNUITY.—The term ‘qualified joint
21 and survivor annuity’ has the meaning pro-
22 vided in section 417(b).

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

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

3 (2) CONFORMING AMENDMENTS.—

4 (A) Subparagraph (B) of section
5 401(a)(13) of such Code (relating to special
6 rules for domestic relations orders) is amended
7 by inserting “or if such creation, assignment, or
8 recognition pursuant to such order is necessary
9 for compliance with the requirements of para-
10 graph (32)” before the period.

11 (B) Subsection (p) of section 414 of such
12 Code (defining qualified domestic relations or-
13 ders) is amended—

14 (i) in paragraph (3)(C), by inserting
15 “or to a divorced spouse of the participant
16 in connection with a previously occurring
17 divorce as required under section
18 401(a)(32)” before the period; and

19 (ii) in paragraph (7)(C), by striking
20 “if there had been no order” and inserting
21 “in accordance with section 401(a)(32) as
22 if there had been no qualified domestic re-
23 lations order”.

24 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
25 INCOME SECURITY ACT OF 1974.—

1 (1) IN GENERAL.—Section 206 of Employee
2 Retirement Income Security Act of 1974 (29 U.S.C.
3 1056) is amended by adding at the end the following
4 new subsection:

5 “(e)(1) In the case of a divorce of a participant in
6 a pension plan from a spouse who is, immediately before
7 the divorce, a beneficiary under the plan, the plan shall
8 provide that at least 50 percent of the marital share of
9 the accrued benefit of the participant under the plan
10 ceases to be an accrued benefit of such participant and
11 becomes an accrued benefit of such divorced spouse, deter-
12 mined and payable upon the earlier of the retirement of
13 the participant, the participant’s death, or the termination
14 of the plan, except to the extent that a qualified domestic
15 relations order in connection with such divorce provides
16 otherwise.

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

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

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

23 “(C) to require the payment of benefits to the
24 divorced spouse which are required to be paid to an-
25 other individual in accordance with this subsection

1 or pursuant to a domestic relation order previously
2 determined to be a qualified domestic relations
3 order, or

4 “(D) to require payment of benefits to the di-
5 vorced spouse in the form of a joint and survivor an-
6 nuity to the divorced spouse and his or her subse-
7 quent spouse.

8 “(3) For purposes of this subsection—

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

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

15 “(i) the actuarial present value of the ac-
16 crued benefit, by

17 “(ii) a fraction—

18 “(I) the numerator of which is the pe-
19 riod of time, during the marriage between
20 the spouse and the participant in the plan,
21 which constitutes creditable service by the
22 participant under the plan, and

23 “(II) the denominator of which is the
24 total period of time which constitutes cred-

1 itable service by the participant under the
2 plan.

3 “(C) The term ‘qualified joint and survivor an-
4 nuity’ shall have the meaning provided in section
5 205(d).

6 “(4) In prescribing regulations under this subsection,
7 the Secretary shall consult with the Secretary of the
8 Treasury.”.

9 (2) CONFORMING AMENDMENTS.—Section
10 206(d) of such Act (29 U.S.C. 1056(d)) is amend-
11 ed—

12 (A) in the first sentence of paragraph
13 (3)(A), by inserting “or if such creation, assign-
14 ment, or recognition pursuant to such order is
15 necessary for compliance with the requirements
16 of subsection (e)” before the period;

17 (B) in paragraph (3)(D)(iii), by inserting
18 “or to a divorced spouse of the participant in
19 connection with a previously occurring divorce
20 as required under subsection (e)” before the pe-
21 riod; and

22 (C) in paragraph (3)(H)(iii), by striking
23 “if there had been no order” and inserting “in
24 accordance with subsection (e) as if there had
25 been no qualified domestic relations order”.

1 **SEC. 6. EFFECTIVE DATES.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this Act, other than section
4 2, shall apply with respect to plan years beginning on or
5 after January 1, 1996, and the amendments made by sec-
6 tion 5 shall apply only with respect to divorces becoming
7 final in such plan years.

8 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
9 PLANS.—In the case of a plan maintained pursuant to 1
10 or more collective bargaining agreements between em-
11 ployee representatives and 1 or more employers ratified
12 on or before the date of the enactment of this Act, sub-
13 section (a) shall be applied to benefits pursuant to, and
14 individuals covered by, any such agreement by substituting
15 for “January 1, 1996” the date of the commencement of
16 the first plan year beginning on or after the earlier of—

17 (1) the later of—

18 (A) January 1, 1996, or

19 (B) the date on which the last of such col-
20 lective bargaining agreements terminates (de-
21 termined without regard to any extension there-
22 of after the date of the enactment of this Act),
23 or

24 (2) January 1, 1999.

25 (c) PLAN AMENDMENTS.—If any amendment made
26 by this Act requires an amendment to any plan, such plan

1 amendment shall not be required to be made before the
2 first plan year beginning on or after January 1, 1996, if—

3 (1) during the period after such amendment
4 made by this Act takes effect and before such first
5 plan year, the plan is operated in accordance with
6 the requirements of such amendment made by this
7 Act, and

8 (2) such plan amendment applies retroactively
9 to the period after such amendment made by this
10 Act takes effect and such first plan year.

11 A plan shall not be treated as failing to provide definitely
12 determinable benefits or contributions, or to be operated
13 in accordance with the provisions of the plan, merely be-
14 cause it operates in accordance with this subsection.

15 **SEC. 7. CLARIFICATION OF CONTINUED AVAILABILITY OF**
16 **REMEDIES RELATING TO MATTERS TREATED**
17 **IN DOMESTIC RELATIONS ORDERS ENTERED**
18 **BEFORE 1985.**

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

20 (1) under a prior domestic relations order en-
21 tered before January 1, 1985, in an action for di-
22 vorce—

23 (A) the right of a spouse under a pension
24 plan to an accrued benefit under such plan was
25 not divided between spouses,

1 (B) any right of a spouse with respect to
2 such an accrued benefit was waived without the
3 informed consent of such spouse, or

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

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

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

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

1 (1) IN GENERAL.—Terms used in this section
2 which are defined in section 3 of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C.
4 1002) shall have the meanings provided such terms
5 by such section.

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

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

12 (B) 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 (3) PLAN.—All pension plans in which a person
23 has been a participant shall be treated as one plan
24 with respect to such person.

1 **SEC. 8. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**
2 **ROAD RETIREMENT ANNUITIES INDEPEND-**
3 **ENT OF ACTUAL ENTITLEMENT OF EM-**
4 **PLOYEE.**

5 Section 2 of the Railroad Retirement Act of 1974 (45
6 U.S.C. 231a) is amended—

7 (1) in subsection (c)(4)(i), by striking “(A) is
8 entitled to an annuity under subsection (a)(1) and
9 (B)””; and

10 (2) in subsection (e)(5), by striking “or di-
11 vorced wife” the second place it appears.

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