

103^D CONGRESS
1ST SESSION

H. R. 2502

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 1993

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

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23 is repealed.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, 1993.

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 em-
19 ployer.”.

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, 1994, 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, 1994” 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, 1994, 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, 1996.

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, 1994, 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. STUDY ON COST-OF-LIVING ADJUSTMENTS UNDER**
12 **PRIVATE PENSION PLANS.**

13 (a) STUDY BY GENERAL ACCOUNTING OFFICE.—As
14 soon as possible after the date of the enactment of this
15 Act, the Comptroller General of the United States, in ac-
16 cordance with the authority provided under section
17 11016(d) of the Single-Employer Pension Plan Amend-
18 ments Act of 1986 (100 Stat. 275), shall undertake a
19 thorough study with respect to alternative methods of re-
20 quiring employee pension benefit plans to provide cost-of-
21 living and other adjustments to benefits payable under
22 such plans.

23 (b) MATTERS TO BE STUDIED.—The Comptroller
24 General, in carrying out the study provided for in this sec-
25 tion, shall address, analyze, and report specifically on—

1 (1) the effect inflation is having and may be ex-
2 pected to have on women receiving private pension
3 benefits as either plan participants or beneficiaries,

4 (2) the number of plans which provide for cost-
5 of-living or other adjustments to benefits,

6 (3) the manner in which plans providing for
7 such adjustments determine when, and for whom, an
8 adjustment will be made,

9 (4) the frequency with which other plans make
10 cost-of-living and other benefit adjustments, and
11 how the determination to make such adjustments is
12 made,

13 (5) the possible application of funds currently
14 available for employer reversions for cost-of-living
15 and other benefit adjustments, and

16 (6) the costs incurred in requiring such adjust-
17 ments to benefits.

18 (c) REPORT.—Not later than 2 years after the date
19 of the enactment of this Act, the Comptroller General shall
20 submit to the Committee on Ways and Means and the
21 Committee on Education and Labor of the House of Rep-
22 resentatives and the Committee on Finance and the Com-
23 mittee on Labor and Human Resources of the Senate a
24 report of the findings of the study provided for by this

1 section, together with any recommendations the Comptrol-
2 ler General considers appropriate.

3 **SEC. 8. STUDY ON PENSION PORTABILITY.**

4 (a) STUDY BY GENERAL ACCOUNTING OFFICE.—As
5 soon as possible after the date of the enactment of this
6 Act, the Comptroller General of the United States, in ac-
7 cordance with the authority provided under section
8 11016(d) of the Single-Employer Pension Plan Amend-
9 ments Act of 1986 (100 Stat. 275), shall undertake a
10 thorough study with respect to alternative pension port-
11 ability mechanisms, including mechanisms for promoting
12 portability of benefits, credited service, and current values
13 of cash distributions, for preserving and enhancing the
14 real value of deferred vested pension benefits.

15 (b) MATTERS TO BE STUDIED.—The Comptroller
16 General, in carrying out the study provided for in this sec-
17 tion, shall address, analyze, and report specifically on—

18 (1) the types of possible portability mechanisms
19 for both defined benefit plans and defined contribu-
20 tion plans,

21 (2) the manner in which, and extent to which,
22 each mechanism would preserve and enhance the
23 real value of deferred vested benefits,

24 (3) the most effective ways to ensure that re-
25 tirement money will be used for retirement,

1 (4) the measures necessary to be taken to effec-
2 tively ensure that the joint and survivor annuity
3 form of benefit will be preserved,

4 (5) the existing rules under the Employee Re-
5 tirement Income Security Act of 1974, the Internal
6 Revenue Code of 1986, and other applicable provi-
7 sions of law which can be considered portability
8 mechanisms, their effectiveness, and the frequency
9 of their use, and

10 (6) the costs of establishing effective portability
11 mechanisms for both defined benefit plans and de-
12 fined contribution plans.

13 (c) REPORT.—Not later than 2 years after the date
14 of the enactment of this Act, the Comptroller General shall
15 submit to the Committee on Ways and Means and the
16 Committee on Education and Labor of the House of Rep-
17 resentatives and the Committee on Finance and the Com-
18 mittee on Labor and Human Resources of the Senate a
19 report of the findings of the study provided for by this
20 section, together with any recommendations the Comptrol-
21 ler General considers appropriate.

1 **SEC. 9. CLARIFICATION OF CONTINUED AVAILABILITY OF**
2 **REMEDIES RELATING TO MATTERS TREATED**
3 **IN DOMESTIC RELATIONS ORDERS ENTERED**
4 **BEFORE 1985.**

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

6 (1) under a prior domestic relations order en-
7 tered before January 1, 1985, in an action for di-
8 vorce—

9 (A) the right of a spouse under a pension
10 plan to an accrued benefit under such plan was
11 not divided between spouses,

12 (B) any right of a spouse with respect to
13 such an accrued benefit was waived without the
14 informed consent of such spouse, or

15 (C) the right of a spouse as a participant
16 under a pension plan to an accrued benefit
17 under such plan was divided so that the other
18 spouse received less than such other spouse's
19 pro rata share of the accrued benefit under the
20 plan, or

21 (2) a court of competent jurisdiction determines
22 that any further action is appropriate with respect
23 to any matter to which a prior domestic relations
24 order entered before such date applies,

25 nothing in the provisions of section 104, 204, or 303 of
26 the Retirement Equity Act of 1984 (Public Law 98-397)

1 or the amendments made thereby shall be construed to
2 require or permit the treatment, for purposes of such pro-
3 visions, of a domestic relations order, which is entered on
4 or after the date of the enactment of this Act and which
5 supercedes, amends the terms of, or otherwise affects such
6 prior domestic relations order, as other than a qualified
7 domestic relations order solely because such prior domestic
8 relations order was entered before January 1, 1985.

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

10 (1) IN GENERAL.—Terms used in this section
11 which are defined in section 3 of the Employee Re-
12 tirement Income Security Act of 1974 (29 U.S.C.
13 1002) shall have the meanings provided such terms
14 by such section.

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

19 (A) the actuarial present value of the ac-
20 crued benefit, by

21 (B) a fraction—

22 (i) the numerator of which is the pe-
23 riod of time, during the marriage between
24 the spouse and the participant in the plan,

1 which constitutes creditable service by the
2 participant under the plan, and

3 (ii) the denominator of which is the
4 total period of time which constitutes cred-
5 itable service by the participant under the
6 plan.

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

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