[JOINT COMMITTEE PRINT]

DESCRIPTION OF S. 19 ("RETIREMENT EQUITY ACT OF 1983") AND S. 888 ("ECONOMIC EQUITY ACT OF 1983")

SCHEDULED FOR HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON JUNE 20-21, 1983

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Senate Committee on Finance has scheduled public hearings on June 20-21, 1983, on two bills relating to equality of retirement and certain other economic or tax-related provisions of Federal laws.

S. 19 ("Retirement Equity Act of 1983," introduced by Senators Dole, Long, Heinz, Danforth, Wallop, and others) relates to equality of economic and tax opportunities for women and men under retirement plans. S. 888 ("Economic Equity Act of 1983," introduced by Senators Durenberger, Packwood, Baucus, Wallop, Heinz, Mitchell, Matsunaga, and others) relates to tax and retirement matters (Title I), dependent care program (Title II), nondiscrimination in insurance (Title III), regulatory reform and gender neutrality (Title IV), and child support enforcement (Title V).

The first part of the pamphlet is a summary of the bills. This is followed in the second part with a more detailed description of present law and the provisions of the bills, with the similar provisions of S. 19 and S. 888 described together.

I. SUMMARY

1. S. 19—Senators Dole, Long, Heinz, Danforth, Wallop, and Others

"Retirement Equity Act of 1983"

Service taken into account under pension, profit-sharing, and stock bonus plans

The bill would reduce from 25 to 21 the maximum age requirement that a pension, profit-sharing, or stock bonus plan may impose as a condition of plan participation and would require that a plan provide credit for certain periods of maternity or paternity leave.

Survivor benefits under pension, etc., plans

The bill would amend the joint and survivor annuity rules (1) to require that a participant's spouse consent to a participant's election not to receive a joint and survivor annuity; and (2) to require that if a survivor benefit is payable under a plan, then the benefit is payable to the spouse who was married to the participant at the time annuity payments began.

Cash out of certain benefits under pension, etc., plans

The bill would permit a pension, etc., plan to cash out a separated participant's benefit if the value of the benefit does not exceed $3,500.

Assignment or alienation of benefits under pension, etc., plans

The bill would make it clear that ERISA does not prohibit the assignment or alienation of benefits in the case of a judgment, decree, or order relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law. The bill would also establish a separate benefit for the divorced spouse of a plan participant in a pension, etc., plan. Conforming changes are made to the rules governing taxability of plan distributions and the rules permitting such distributions to be rolled over to other eligible retirement plans.

Notice of forfeitability of benefits

Present law requires that a plan furnish a participant with a statement of benefits under certain circumstances. The bill would require that the statement include a notice of any benefits that are forfeitable in the event the participant dies before a particular date.

2. S. 888—Senators Durenberger, Packwood, Baucus, Wallop, Heinz, Mitchell, Matsunaga, and Others

"Economic Equity Act of 1983"

Title I—Tax and Retirement Provisions Generally

Service taken into account under pension, etc., plans

The bill would reduce from 25 to 21 the maximum age a pension, etc., plan can require an employee to attain as a condition of becoming a participant in the plan. Additionally, a plan would not be permitted to ignore service after age 21 for purposes of the determining the vested portion of a participant's benefit. The bill would also provide rules relating to crediting of service for the participation, vesting, and benefit accrual requirements in cases in which an employee is absent from work on approved maternity or paternity leave.

Survivor benefits under pension, etc., plans

Under the bill, a pension, etc., plan would be required to provide a survivor annuity for a participant's surviving spouse if the participant dies before the annuity starting date and the participant has at least ten years of service for vesting purposes. The amount of the survivor annuity would be computed as if the participant had survived until the day after the annuity starting date. In addition, if a survivor annuity is payable, the bill would require that the annuity be provided to the spouse who was married to the participant on the annuity starting date.

The election not to take a joint and survivor annuity would be changed to require that both the participant and the participant's spouse make the election.

Assignment or alienation of benefits under pension, etc., plans

The bill would clarify that ERISA does not prohibit the assignment or alienation of benefits in the case of a judgment, decree, or order relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law. State law providing for the right to such payments would not be preempted by Federal law.

Individual retirement accounts

The bill would provide that, for a married couple, the limits on the deduction for contributions to an IRA would be based on the compensation of the spouse whose compensation is greater. The bill would also permit alimony includible in gross income to be included in compensation for purposes of the IRA deduction limits.

Civil Service Retirement System

The bill would provide that the former spouse of a Federal civilian employee would be entitled to an annuity if the former spouse was married to the employee for at least ten of the employee's creditable years of service. The annuity would be equal to 50 percent of the annuity to which the employee is entitled (or a proportionate share of 50 percent of the annuity). As under present law, this provision would not apply if the terms of any court decree or order of divorce, annulment, or legal separation required payments be made to another person. No such annuity would be payable if the former spouse remarries before age 60.

Under the bill, a former spouse of a Federal civilian employee would be entitled to a survivor annuity unless a court decree or order has been issued that otherwise concerns the annuity. This rule would only apply if the former spouse was married to the employee for at least ten of the employee's years of creditable service. The annuity would equal 55 percent of the annuity to which the employee would be entitled (or a proportionate share of 55 percent of the annuity).

If a survivor annuity is provided to a former spouse, the bill would require that a survivor annuity for any other spouse or former spouse of an employee cannot exceed the maximum available survivor annuity reduced by the survivor annuity paid to the former spouse. The maximum available survivor annuity would be 55 percent of the employee's annuity. The survivor annuity to a former spouse would terminate if the former spouse dies or remarries before age 60.

Under the bill, an election to waive or to reduce a survivor annuity could be made only by the employee and the employee's spouse or former spouse. This election would be required to be made in writing before a notary public. The Office of Personnel Management could permit the employee to make the election without the spouse or former spouse if the employee establishes that the spouse or former spouse cannot be located.

The bill would provide that the former spouse of an employee would be entitled to a portion of an employee's lump sum benefit paid upon termination from service.

Targeted jobs credit for displaced homemakers

The targeted jobs tax credit, which applies to wages paid to eligible individuals who begin work for the employer before January 1, 1985, currently is available on an elective basis for hiring individuals from one or more of nine target groups. The credit is equal to 50 percent of the first $6,000 of qualified first-year wages and 25 percent of the first $6,000 of qualified second-year wages paid to a member of a targeted group.

The bill would add displaced homemakers as a targeted group, for purposes of the targeted jobs credit. This provision would apply to amounts paid or incurred after enactment to displaced homemakers who begin to work for the employer after that date.

Increase in zero bracket amount for heads of household

Under present law, a head of household has a zero bracket amount of $2,300 (the same as a single person).

The bill would increase the zero bracket amount for heads of household to $3,400 (the same as married taxpayers filing jointly). This provision would apply in taxable years beginning after 1983.

Title II—Dependent Care Program

Child and dependent care credit

Present law provides a nonrefundable tax credit for a portion of employment-related dependent care expenses paid by an individual who maintains a household that includes one or more qualifying individuals (*i.e.*, dependents under the age of 15 or physically or mentally incapacitated dependents or spouses). The maximum credit is equal to 30 percent of employment-related expenses of individuals with $10,000 or less of adjusted gross income (up to $720 if there is one qualifying individual or $1,440 if there are two or more qualifying individuals). The maximum 30-percent credit rate is reduced (but not below 20 percent) by one percentage point for each $2,000 (or fraction thereof) of adjusted gross income above $10,000 so that the credit rate would be 20 percent for taxpayers with incomes of $40,000 or more.

The bill would make the credit refundable (*i.e.*, allow the amount of the credit to exceed a taxpayer's tax liability) and increase the percentage of employment-related expenses that qualify for the credit. The credit would be equal to 50 percent of employment-related expenses of individuals who have $10,000 or less of adjusted gross income (for a maximum credit of $1,200, if there is one qualifying individual, and $2,400, if there are two or more qualifying individuals). The 50-percent credit rate would be reduced (but not below 20 percent) by one percentage point for each full $1,000 of adjusted gross income above $10,000.

Tax treatment of dependent care organizations

Present law generally exempts from Federal taxation organizations that are organized or operated exclusively for religious, charitable, educational, or certain other enumerated purposes. There is not a specific tax exemption for dependent care organizations.

The bill would provide a Federal tax exemption for certain dependent care organizations.

Child care information and referral services

The bill would establish a grant program to assist public or private nonprofit organizations in the establishment or operation of community-based child care information and referral centers. An appropriation of $8,000,000 per fiscal year would be authorized for the purpose of carrying out this program. Any one applicant could receive a maximum grant, for any fiscal year, of no more than $75,000.

Title III—Nondiscrimination in Insurance

The bill would declare that it is the policy of the United States that no insurer should be allowed to refuse to make insurance available on the basis of race, color, religion, sex, or national origin, or to engage in certain other discriminatory activity.

Unlawful discriminatory acts

Under the bill, certain acts of an insurer would be defined as unlawful discriminatory acts and would be prohibited. Generally, discrimination on the basis of race, color, religion, sex, or national origin would be prohibited in all aspects of the negotiation and pricing of insurance. In addition, an insurer could not publish statements indicating a policy of discrimination in the availability or terms of insurance products.

With respect to existing contracts, the bill would forbid charges for, or collection of premiums based on, discriminatory criteria. Similarly, with respect to existing contracts, the bill would prohibit the determination or the payment of benefits based on discriminatory criteria. An insurer could modify premiums and could increase (but not decrease) benefits under existing contracts if clearly necessary to comply with the requirements of the bill. A pension plan could be considered an insurer under the bill.

The bill would not prevent an insurer who provides insurance coverage solely to persons of a single religious affiliation from continuing to provide coverage on that basis.

Enforcement

The bill would provide for State or local enforcement of applicable State or local antidiscrimination laws before a civil action could be brought against an insurer. In addition, the bill would provide that either the aggrieved person or the Attorney General could bring a civil action against the insurer or any other person who violates the provisions of the bill. The bill provides for certain judicial relief if an insurer has committed a discriminatory action.

Title IV—Regulatory Reform and Gender Neutrality

The bill generally would require the head of each Federal agency to conduct a review of agency rules, to revise those which make gender based distinctions so that they are neutral to the extent practible, and to submit to the Congress legislative proposals and an annual progress report.

In addition, the bill would alter the present gender construction rule in the U.S. Code to remove the existing reference to "masculine gender" and "feminine gender."

Title V—Child Support Enforcement

The bill would provide that the purpose of the child support enforcement program under the Social Security Act is to assure compliance with obligations to pay child support to each child in the United States living with one parent.

Collection of past-due support from Federal tax refunds

Present law authorizes States to notify the IRS of absent parents who owe past-due child support to children receiving AFDC. Amounts then are withheld from the absent parents' Federal income tax refunds and used to reimburse the Federal government and State governments for AFDC paid to the children. The bill would provide that the States could use the same procedure on behalf of children not receiving AFDC.

Child support clearinghouse

The bill would require a State plan for child support to provide that the State will maintain a child support clearinghouse or comparable procedure. Any child support payments issued, modified, or enforced after December 31, 1983, would be recorded and paid through the State's child support clearinghouse.

Strengthening of State child support enforcement procedures

The bill would require that a State, as a condition to having an approved child support plan, (1) seek medical support for children for whom it is seeking financial support when available at a reasonable cost through employer-provided health insurance; (2) provide for mandatory wage assignments in the case of delinquent child support; (3) impose liens against property and estates when child support payments are delinquent; (4) provide for offset against tax refunds, if the State imposes income taxes, to collect past-due support; and (5) establish quasi-judicial or administrative procedures to establish and enforce support orders. In addition, a State would be required to implement at least three of the following: (1) voluntary wage assignments for payment of support obligations; (2) the use of highly accurate scientific testing to determine paternity; (3) authorization for a court to require a security, bond, or other guarantee to secure child support obligations; (4) a procedure for establishing paternity without the participation of the alleged father if he refuses to cooperate in establishing paternity; and (5) a standard to measure the ability of absent parents to make support payments and guidelines to insure the similarity of support orders in similar situations.

Exceptions to discharge in bankruptcy

The bill would amend the Bankruptcy Act to provide that a discharge in bankruptcy would not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, without regard to whether the debt is in connection with a separation, divorce decree, or property settlement agreement.

Allotment of Federal pay for child and spousal support

The bill would establish a Federal pay allotment procedure with respect to child support payments and child and spousal support payments owed by Federal employees under certain support orders and subject to certain limitations.

II. DESCRIPTION OF THE BILLS

A. Periods of Employee Service Taken Into Account (Secs. 2 and 3 of S. 19 and Secs. 106 to 108 of S. 888)

Present Law

In general

If a pension, profit-sharing, or stock bonus plan qualifies under the tax law[1] then (1) a trust under the plan is generally exempt from income tax, (2) employers are generally allowed deductions (within limits) for plan contributions for the year for which the contributions are made, even though participants are not taxed on plan benefits until the benefits are distributed, (3) benefits distributed as a lump sum distribution are accorded special long-term capital gain or 10-year income averaging treatment, or may be rolled over, tax-free, to an individual retirement account (IRA) or to another qualified plan, and (4) limited estate and gift tax exclusions may be available.

Minimum participation, vesting, and benefit accrual requirements

In general

Under a pension plan, benefits are provided to plan participants under formulas that determine the amount of the benefit a participant may earn, the portion of that benefit that has been earned, and the portion of the earned benefit that is nonforfeitable. Accordingly, plans provide rules for determining whether an employee is a plan participant (the employee participation rules), for measuring benefits (the benefit formula), for determining the portion of the benefit that has been earned (the benefit accrual rules), and for determining the nonforfeitable percentage of a participant's benefit (the vesting schedule).

Under present law, a pension, etc., plan must satisfy certain minimum standards relating to the conditions under which employees may be excluded from plan participation, to the formula under which plan benefits are accrued, and to the vesting schedule. The participation standards limit exclusions based on the age and period of service completed by an employee.[2] The benefit accrual standards are based upon the number of years of plan participation. The vesting standard is generally based upon the number of years of service with the employer completed by the employee.

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[1]Sec. 401(a) of the Code.

[2]In addition, the Code provides participation rules for qualified pension, etc., plans. These rules are designed to require that qualified plans provide participation to a broad cross-section of employees.

Participation

Under present law[3] a qualified pension, etc., plan generally may not require, as a condition of plan participation, that an employee to complete more than one year of service or attain an age greater than 25.[4]

In general, for purposes of the participation requirements, the term "year of service" generally means a 12-month period during which an employee has worked at least 1,000 hours.[5] The first 12-month period is measured from the date the employee enters service. Accordingly, an employee has fulfilled the year of service requirement if at least 1,000 hours of service are completed by the first anniversary date of employment. Later 12-month periods may be based on the plan year.

In general, all years of service with the employer maintaining the plan must be taken into account for purposes of the minimum participation requirements. No credit need be provided, however, for periods during which an employee is considered to have a break in service. In some cases, an employee who returns to an employer after a break in service may lose credit for pre-break service.

A plan may provide that a 1-year break in service occurs in a 12-month measuring period in which the employee does not complete more than 500 hours of service.[6] If an employee has incurred a 1-year break in service, the plan may require a 1-year waiting period before reentry. Upon reentry, the employee's pre-break and post-break service are generally required to be aggregated, and the employee is to receive full credit for the waiting period service if any part of the employee's benefit derived from employer contributions was vested or if the number of 1-year breaks in service is less than the number of years of service completed before the break.[7]

Vesting

The rules for plan qualification generally require that a plan meet one of three alternative minimum vesting schedules.[8] Under these schedules, an employee's right to benefits derived from employer contributions become nonforfeitable (vest) to varying degrees upon completion of specified periods of service with an employer.[9]

Under one of the schedules, full vesting is required upon completion of 10 years of service (no vesting is required before the end of the 10th year).[10] Under a second schedule, vesting begins at 25 percent after completion of five years of service and increases gradually to 100 percent after completion of 15 years of service.[11] Under

[3] Sec. 410(a) of the Code.

[4] Accordingly, an employee may not generally be excluded from plan participation on the basis of length of service if the employee has completed one year of service and may not generally be excluded on the basis of age if the employee has attained age 25. An employee who has completed one year of service and who has attained age 25 may, however, be excluded from plan participation on other grounds (for example, a plan may be limited to employees within a particular job classification).

[5] Sec. 410(a)(3) of the Code.

[6] Sec. 410(a)(5) of the Code.

[7] Sec. 410(a)(5) of the Code.

[8] Sec. 411(a) of the Code.

[9] An employee's right to benefits derived from employee contributions is immediately nonforfeitable.

[10] Sec. 411(a)(2)(A) of the Code.

[11] Sec. 411(a)(2)(B) of the Code.

these two vesting schedules, all years of service with the employer maintaining the plan after attainment of age 22 generally must be taken into account for purposes of determining an employee's vested percentage. The third schedule takes both age and service into account, but in any event requires 50 percent vesting after 10 years of service and an additional 10 percent vesting for each year thereafter until 100 percent vesting is attained after 15 years of service.[12] Under this schedule, all years of service with the employer must be taken into account for purposes of determining an employee's vested percentage if, during those years, the employee participated in the plan.

Break in service rules also apply under the vesting rules. The break in service rules applicable in determining the number of years of service taken into account for vesting purposes under a defined benefit plan[13] are similar to the rules applicable for purposes of determining the number of years taken into account for purposes of determining plan participation. Special break in service rules apply for purposes of the vesting rules in the case of a defined contribution plan.[14] Pre-break service is not taken into account under such a plan in determining the vested percentage of a participant after a break in service.

Benefit accruals

Present law[15] requires that a participant in a pension, etc., plan accrue (earn) the benefit provided by the plan at certain minimum rates. The accrual rules are designed to limit backloading of benefits. Under a backloaded accrual schedule, a larger portion of the benefit is earned in later years of service. Accordingly, under a plan with backloaded accruals, an employee who separates from service before reaching retirement age earns a disproportionately lower share of the benefit.[16]

Maternity or paternity leave

For purposes of the minimum participation, vesting, and benefit accrual requirements, a plan is not required to give an employee credit for periods of time during for which the employee is not compensated for maternity or paternity leave. A plan is not required to credit more than 501 hours of service for paid maternity or paternity leave.

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[12] Sec. 411(a)(2)(C) of the Code.

[13] Other than certain defined benefit plans funded solely with insurance contracts.

[14] Or certain defined benefit plans funded solely with insurance contracts.

[15] Sec. 411(b) of the Code.

[16] For example, a plan's benefit formula might provide a benefit equal to 2 percent of average compensation multiplied by the number of years of plan participation. Under the minimum standards, a plan's accrual formula might provide that 2 1/7 percent of this benefit is earned for each of the first 20 years of service and that 2 6/7 percent of the benefit is earned for each of the next 20 years of service. An employee who separated after 20 years of service would have earned 42 6/7 percent (2 1/7 percent X 20) of a benefit equal to 40 percent (2 percent X 20) of average compensation. The benefit would be 17 1/7 percent of the employee's average compensation (42 6/7 percent X 40 percent of average compensation). If the benefit accrual had been equal for each year of plan participation (2 1/2 percent of the benefit per year of participation), the benefit earned would have been 20 percent of average compensation (20 X 2.5 percent X 40 percent).

Explanation of the Bills

S. 19

Maximum age condition

The bill would reduce from 25 to 21 the maximum age requirement that a plan may specify as a condition of plan participation. Accordingly, under the bill, an employee who has attained age 21 could not be excluded from plan participation on the basis of age. No change would be made with respect to the rules relating to the maximum period of service a plan may require as a condition of plan participation.[17]

Maternity or paternity leave

The bill would amend the break in service rules to require that a pension, etc., plan provide credit for certain periods of absence attributable to (1) the birth of a child of the individual or (2) for purposes of caring for such child during the period immediately following the birth. Under the bill, solely for purposes of determining whether a break in service has occurred under the minimum participation standards, up to 501 hours of service which, but for the absence would have been credited to the individual, will be treated as hours of service. A credit of 501 hours during a 12-month measuring period is sufficient to prevent a break in service.

Effective dates

For a plan that is not in existence on January 25, 1983, the provisions would be effective for years ending after January 25, 1983. For a plan that is in existence on January 25, 1983, the provisions would be effective for years beginning after December 31, 1984.

S. 888

Maximum age condition

The bill would provide that a pension, etc., plan may not require, as a condition of participation, completion of more than one year of service or attainment of an age greater than 21 (whichever occurs later).

Under the bill, a plan would not be permitted to ignore service after age 21 for purposes of the minimum vesting requirements.

Maternity or paternity leave

For purposes of the minimum participation, vesting, and benefit accrual requirements, the bill would provide that an employee would be deemed to have performed 20 hours of service for each week of approved maternity or paternity leave, whether or not the employee is paid during the leave. Approved maternity or paternity leave would mean any period (up to 52 weeks) during which an employee is absent from work by reason of pregnancy or the birth of a child of the employee or for purposes of caring for a child of the employee, provided the employer approves the leave. This

[17] Also, the bill would not change the special rule permitting a requirement of age 30 under a plan maintained exclusively for the benefit of employees of certain tax exempt educational organizations (sec. 410(a)(1)(B)(ii) of the Code).

credit of 20 hours per week, however, would not be required unless the employee continues to perform services for the employer after the end of the leave or offers to perform services but is not reemployed by the employer.

If the period of approved leave exceeded 25 weeks during a 12-month measuring period, the employee would be credited with more than 500 hours and would not incur a break in service solely because of the leave. If the period of approved leave extended for at least 50 weeks, the employee would be credited with a full year of serve for participation and vesting purposes and at least a partial year of service for benefit accrual purposes.

Effective dates

The provisions relating to the maximum age condition would be effective for plan years beginning more than ninety days after the date of enactment.

The provisions relating to maternity or paternity leave would be effective for plan years beginning more than one year after the date of enactment.

B. Cash Out of Certain Accrued Benefits (Sec. 6 of S. 19)

Present Law

Under present law,[18] in the case of an employee whose plan participation terminates, a pension, etc., plan may "cash out" (*i.e.*, pay out the balance to the credit of a plan participant without the participant's consent) the benefit if the present value of the benefit does not exceed $1,750. Generally, a cash out distribution from a qualified pension, etc., plan can be rolled over, tax free, to an IRA or to another qualified plan.[19]

Explanation of the Bill

S. 19

The bill would increase the limit on a cash out to $3,500 from $1,750.

Effective date

The provision would be effective for years ending after the date of enactment.

C. Joint and Survivor Annuity Requirements (Sec. 4 of S. 19 and Sec. 103 of S. 888)

Present Law

Under present law,[20] if a participant elects benefits in the form of an annuity under a plan and the participant is married for the one year period ending on the date the annuity payments begin, the benefit must be paid in the form of a qualified joint and survi-

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[18] Sec. 411(a)(7)(B) of the Code.
[19] If an employee's benefit has been cashed out, the employee may be able to "buy back" the years of service with respect to which the cash out was made if the employee resumes plan participation. See sec. 411(a)(7)(C) of the Code.
[20] sec. 401(a)(11) of the code.

vor annuity unless the participant elects an annuity in another form.[21] A joint and survivor annuity provides benefits for the joint lives of the participant and another individual and, after the death of either, provides a benefit for the life of the survivor. Under a qualified joint and survivor annuity, benefits are payable for the joint lives of the participant and the participant's spouse and, if the spouse is the survivor, the survivor benefit must not be less than one-half of the benefits payable during the joint lives of the couple.

In the case of an employee who is eligible to retire before the normal retirement age under the plan, and who has not retired, a qualified joint and survivor benefit need not be provided under the plan unless the employee affirmatively elected benefits in that form. Thus, under present law, if the plan provides that no benefits will be paid with respect to a participant who dies while still employed but after attaining the plan's early retirement age, the plan need not provide a survivor annuity to the participant's spouse unless the participant, prior to death, had made an affirmative election with respect to the survivor annuity. Moreover, the plan need not make this survivor annuity option available until the time the employee attains the early retirement age or is within 10 years of normal retirement age (whichever is later).

In the case of a married employee who retires, or who attains the normal retirement age, if the normal form of benefits under a plan is an annuity, all annuity benefits must be paid in the form of a qualified joint and survivor annuity unless the employee affirmatively elects to take benefits in another form. The employee must be afforded a reasonable opportunity to elect out of the joint and survivor benefit before benefit payments begin. A plan may provide that any election, or revocation of an election, with respect to joint and survivor benefits is not effective if the participant dies within a period of time (not in excess of two years) after making the election or revocation (except in the case of accidental death if the accident that causes death occurs after the election).

The Internal Revenue Service has issued regulations under which a plan need not provide a survivor annuity to a surviving spouse if the spouse was not married to the participant both at the time of the election to take the joint and survivor annuity and at the date of the participant's death.[22]

Explanation of the Bills

S. 19

The bill would require that benefits payable under a pension, etc., plan be paid in the form of a qualified joint and survivor annuity if (1) the plan provides for the payment of benefits in the form of a life annuity, (2) the participant has been married for at least one year before payment of benefits begins, and (3) the participant does not elect another form of benefit.[23]

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[21] For example, a participant may elect a benefit in the form of a single life annuity. If a single life annuity is elected, benefit payments generally end with the death of the participant.

[22] Treas. Reg. 1.401(a)-11(d)(3).

[23] The bill would reverse the result of the decision in *BBS Associates, Inc.* v. *Commissioner*, 74 T.C. 118 affd ————.

The bill would amend the joint and survivor annuity election procedures to require that the spouse of the participant must consent, in writing (witnessed by a plan representative or a notary public) to the election.

In addition, the bill would require that, if a participant was married when benefit payments began and if the participant's spouse at that time survives the participant, then a survivor annuity must be paid to the survivor whether or not the survivor was married to the participant at the time of death. Under the bill, therefore, even if the participant has remarried after the annuity starting date, the spouse to whom the participant was married on the annuity starting date would be entitled to the survivor annuity under the plan.

Effective date

For a plan that is not in existence on January 25, 1983, the provisions would be effective for years ending after January 25, 1983. For a plan that is in existence on January 25, 1983, the provisions would be effective for years beginning after December 31, 1984.

S. 888

Under the bill, a pension, etc., plan would be required to provide a survivor annuity for a participant's surviving spouse if (1) the participant died before the annuity starting date and (2) the participant had completed at least ten years of service for vesting purposes. The survivor annuity would be required to begin not later than the survivor annuity starting date[24] and would be required to continue for the life of the surviving spouse. In addition, the payments under the survivor annuity could not be less that the payments that would have been made to the surviving spouse if the participant had terminated employment on the date on which the death occurred, had survived until the annuity starting date, and had died the following day.

In addition, the bill would require that, if a participant was married when benefit payments began and the participant's spouse at that time survives the participant, a survivor annuity must be paid to the survivor whether or not the survivor was married to the participant at the time of death.

The election not to take a qualified joint and survivor annuity would be changed to require that the spouse of the participant must consent, in writing (witnessed by a plan representative or a notary public) to the election. In addition, the bill would repeal the rule that permits a plan to disregard any election, or revocation of an election, not to take a qualified joint and survivor annuity if the participant dies within two years after the election or revocation.

The bill would provide that a participant who was not an active participant on or after the effective date of the bill could elect to

[24]Under the bill, the survivor annuity starting date would be (1) the date the participant's benefit payments would have begun if the participant had survived to the earliest retirement date under the plan, (2) the date of death of the participant (if later), or (3) any other date selected by the surviving spouse in accordance with the procedures of the plan, but not later than the participant's annuity starting date if the participant had survived until normal retirement age under the plan.

receive benefits in the form of a qualified joint and survivor annuity if the election is made before the annuity starting date.

Effective date

The provision would be effective with respect to plan years beginning more than one year after the date of enactment.

D. Assignment or Alienation of Benefits (Sec. 5 of S. 19 and Secs. 104 and 105 of S.888)

Present Law

Under present law,[25] certain provisions of ERISA supersede (preempt) State laws relating to pension, etc., plans. Among the ERISA provisions that preempt State law are rules relating to assignment and alienation of benefits under plans.[26] The Code includes a corresponding provision applicable to qualified pension, etc., plans.[27]

Under present law, with limited exceptions, benefits under a pension, etc., plan may not be assigned or alienated. A plan that does not prohibit such assignment and alienation is not a qualified plan under the Code and State law permitting such an assignment or alienation is preempted by ERISA.

Several cases have arisen in which courts have been required to determine whether the ERISA preemption applies to family support obligations (*e.g.*, alimony, separate maintenance, and child support obligations). In some of these cases, the courts have held that ERISA was not intended to preempt State law permitting the attachment of vested benefits for the purpose of meeting these obligations.[28] Some courts have held that the ERISA preemption does not prevent application of State law permitting attachment of nonvested benefits for the purpose of meeting family support obligations.[29] There is a divergence of opinion among the courts as to whether ERISA preempts State community property laws insofar as they relate to the rights of a married couple to benefits under a pension, etc., plan.[30]

The IRS has ruled that the anti-assignment requirement is not violated when a plan trustee complies with a court order requiring the distribution of benefits of a participant in pay status to the participant's spouse or children in order to meet the participant's alimony or child support obligations.[31] The IRS has not taken any position with respect to this issue in cases in which the participant's benefits are not in pay status.

[25] Sec. 514 ERISA.
[26] Sec. 206(c) of ERISA.
[27] Sec. 401(a)(13) of the Code.
[28] *See, e.g., American Telephone and Telegraph Co. v. Merry*, 592 F.2d 118 (2d Cir. 1979); *Cody v. Riecker*, 594 F.2d 314 (2d Cir. 1979).
[29] *See, e.g., Weir v. Weir*, 415 A.2d 638 (1980); *Kikkert v. Kikkert* 438 A.2d. 317 (1981)..
[30] In *Stone v. Stone*, 633 F.2d 740 (9th Cir. 1980), the court held that ERISA was not intended to preempt community property laws and that a court order requiring a division of retirement benefits did not violate the anti-assignment provisions. In *Francis v. United Technology Corp*, 458 F.Supp. 84 (N.D. Cal. 1978), however, the court held that ERISA's preemption provision prevents the application of State community property law permitting attachment of plan benefits for family support purposes.
[31] Rev. Rul. 80-27, 1980-1 C.B. 8.

Explanation of the Bill

S. 19

The bill would eliminate the prohibition against assignment or alienation of benefits in a pension, etc., plan in the case of certain qualified divorce distributions. Under the bill, a qualified divorce distribution is the payment of benefits to any individual by reason of a judgment, decree, or order (including an approval of a settlement agreement) relating to child support, alimony payments, or marital property rights, which is made pursuant to a State domestic relations law (including community property law).

The provision would apply to a judgment, decree, or order that (1) creates or recognizes the existence of an individual's right to receive all or a portion of the benefits to which a participant or a participant's designated beneficiary would otherwise be entitled under a qualified pension, etc., plan, (2) clearly identifies the participant, the amount or percentage of the benefits to be paid to the individual, the number of payments to which the judgment, etc., applies, and the name and mailing address of the individual, and (3) does not require the plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election that is not provided under the plan or that is made by a person other than a participant or beneficiary.

Under the bill, the total amount of benefits which may be assigned or alienated may not exceed the amount of the participant's accrued benefit, determined pursuant to regulations issued by the Secretary of the Treasury.

The bill also revises the rules for distributions from pension, etc., plans. A plan that makes a qualified divorce distribution would be required to make such a distribution not later than the plan year in which benefits are made available to the participant with respect to whom the qualified divorce distribution relates and, if the plan provides benefits in the form of an annuity, would be required to make a single life annuity available to any individual receiving a qualified divorce distribution. Alternatively, a pension, etc. plan could make a qualified divorce distribution in the form of a total distribution within a single calendar year (regardless of the amount of the distribution).

Qualified divorce distributions would generally be taxable to the recipient spouse when paid. For purposes of determining the portion of benefits includible in the gross income of the participant and the spouse, the bill would also require that the employee's investment in the contract be prorated (pursuant to regulations to be issued by the Secretary of the Treasury) between the qualified divorce distribution and any other benefits under the plan.

In addition, the bill provides that qualified divorce distributions would not be eligible for special tax treatment under the 10-year forward averaging rules. To the extent that an amount received as qualified divorce distribution from a qualified plan is rolled over to an IRA or to another qualified plan, the amount would not be includible in gross income at the time of the qualified divorce distribution.

Effective date

The provisions would be effective on the date of enactment.

S.888

The bill would eliminate the prohibition against assignment or alienation of benefits in a pension, etc., plan in the case of a judgment, decree, or order (including an approval of a property settlement agreement) relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law (whether of the common law or community property type). The provision would apply only to a judgment, decree, or order that (1) creates or recognizes the existence of an individual's right to receive all or a portion of the benefits to which a participant or a participant's designated beneficiary would otherwise be entitled, (2) clearly identifies the participant, the amount or percentage of the benefits to be paid to the individual, the number of payments to which the judgment, etc., applies, and the name and mailing address of the individual, and (3) does not require the plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election that is not provided under the plan or that is made by a person other than a participant or beneficiary.

In addition, under the bill, the general preemption rule of ERISA would not apply with respect to any judgment, decree, or order pursuant to a State domestic relations law (whether of the common law or community property type).

Effective date

The provision would be effective on the date of enactment.

E. Notice of Forfeitability of Benefits (Sec. 7 of S. 19)

Present Law

Under present law, the administrator of a pension, etc, plan is required to furnish to a plan participant a statement indicating the participant's total accrued benefits and nonforfeitable accrued benefits if the participant requests such a statement. A participant is not entitled to more than one statement during any 12-month period. In addition, present law requires a plan administrator to furnish a statement to each plan participant who (1) separates from service during a plan year, (2) is entitled to a vested deferred benefit under the plan, and (3) did not receive retirement benefits under the plan during the year. This statement must contain the information with respect to the participant that is required on the annual registration form filed with the Secretary of the Treasury.

Explanation of the Bill

S. 19

Under the bill, any statement provided to a plan participant of total accrued benefits and nonforfeitable accrued benefits or any statement provided to a separated plan participant who has a vested deferred benefit must include a notice to the participant of any benefits that may be forfeited if the participant dies before a certain date.

Effective date

In the case of a plan not in existence on January 25, 1983, the provision would be effective for years ending after January 25, 1983. In the case of a plan in existence on January 25, 1983, the provision would be effective for years beginning after December 31, 1984.

F. Individual Retirement Accounts (Secs. 101 and 102 of S. 888)

Present Law

Under present law, an individual generally is entitled to deduct from gross income the amount contributed to an individual retirement account or annuity (IRA).[32] The limit on the deduction for a taxable year is generally the lesser of $2,000 or 100 percent of compensation (earned income in the case of income from self employment). Under a spousal IRA, an individual also is allowed a deduction for contributions to an IRA for the benefit of the individual's spouse who has not attained age 70 1/2 if (1) the spouse has no compensation for the year and (2) the couple files a joint income tax return for the year.

If deductible contributions are made (1) to an individual's IRA and (2) to an IRA for the noncompensated spouse of the individual, then the annual deduction limit on the couple's joint return is increased to $2,250 (or 100 percent of compensation includible in gross income, if less). The annual contribution may be divided as the spouses choose, so long as the contribution for neither spouse exceeds $2,000.

Under present law, in certain cases, alimony received by a divorced spouse can be taken into account under the limits on deductions for IRA contributions. If the requirements of the Code are met, then the IRA deduction limit is not less than the lesser of (1) $1,125 or (2) the sum of the individual's compensation and certain alimony includible in the individual's gross income for the year. This deduction limit applies, however, only if (1) an IRA was established for the benefit of the individual at least five years before the beginning of the calendar year in which the decree of divorce or separate maintenance was issued and (2) for at least three of the most recent five taxable years of the former spouse ending before the taxable year in which the decree was issued, the former spouse paying the alimony was allowed a deduction under the spousal IRA rules for contributions for the benefit of the individual.[33]

Explanation of the Bill

S. 888

Section 101 of the bill would provide that, for purposes of determining the annual limits on deductible contributions to an IRA, the compensation taken into account in the case of a married couple would be that of the spouse whose compensation is greater. For example, if one spouse had includible compensation of $10,000

[32] Code sec. 219.
[33] Sec. 219(b)(4) of the Code.

for a year and the other spouse had no includible compensation, the maximum IRA deduction for a year would be determined as if the spouse with no compensation had $10,000 of compensation for the year. The bill would repeal the special rules of present law relating to married individuals whose spouses have no compensation during a taxable year.

Section 102 of the bill would permit alimony includible in gross income to be included in compensation for purposes of the IRA deduction limits.

Effective date

The provisions would be effective for taxable years beginning after December 31, 1983.

G. Civil Service Retirement System (Sec. 109 of S. 888)

Present Law

In general

Under present law, the Civil Service Retirement System provides retirement and disability benefits for Federal civilian personnel. Entitlement to benefits is determined on the basis of creditable service, which generally is the total of the full years and months of service with the Federal government.

Benefits for former spouses

Under present law, no portion of an employee's retirement or disability benefits is payable to a former spouse of the employee unless the payment is authorized expressly in the terms of any court decree of divorce, annulment, or legal separation, or in the terms of any court order or court-approved property settlement agreement incident to a divorce, annulment, or legal separation.

Survivor benefits

In general, to be eligible for an annuity, the surviving spouse of a Federal civilian employee must have been married to the employee for at least one year immediately before the employee's death or, if married less than one year, must be the parent of the employee's child.

The system provides annuities for both (1) survivors of employees with at least 18 months of creditable civilian service and (2) certain survivors of annuitants (employees who have retired and are receiving annuities).

An eligible surviving spouse of an employee receives 55 percent of the employee's earned annuity at the time of death or a guaranteed minimum that is the lesser of (1) 40 percent of the employee's high 3-year average annual pay, or (2) the annuity that would have been paid if the employee had continued working until age 60 at the same high 3-year average pay.

Certain spouses who are survivors of annuitants are provided an annuity. At retirement, an employee can accept either a full annuity without a survivor provision or a reduced annuity with a survivor provision. The provision for a reduced annuity with a survivor benefit is automatic unless the retiree waives the survivor protection in writing. If the retiree accepts a full annuity without a survivor provision, then no annuity is payable to a surviving spouse.

Beginning at the time of the retiree's death, a surviving spouse is entitled to receive an annuity equal to 55 percent of (1) the retiree's annuity or (2) whatever portion of the retiree's annuity that the retiree designated as a base. Annuities to spouses are paid for life unless the surviving spouse remarries before age 60; benefits terminated for remarriage before age 60 may be reinstated if the remarriage is terminated by death, annulment, or divorce.

Lump sum benefits

Under present law, an employee who separates from service under the system may receive a lump sum payment equal to the accumulated contributions plus, in certain cases, interest.

In addition, if a former employee who is receiving an annuity dies and leaves no eligible survivors or survivor annuities terminate before the exhaustion of the employee's contributions to the system, then the remaining balance (and in limited cases, any accrued interest) is paid in a lump sum to the designated beneficiary or heirs.

Explanation of the Bill

S. 888

Benefits for former spouses

Under section 109 of the bill, the former spouse of an employee who has retired (including a disability retirement) would be entitled to an annuity, if the former spouse was married to the employee for at least 10 years during the employee's period of creditable service. The annuity payments would be equal to 50 percent of the annuity payments to which the employee is entitled if they were married throughout the period of creditable service. If the former spouse was not married to the employee throughout the entire period of creditable service, the annuity would equal the former spouse's proportionate share of 50 percent of the employee's annuity.

The provision would not apply if the terms of any court decree or order of divorce, annulment, or legal separation require that payments be made to another person. The bill would provide that no court decree or order could result in an annuity or combination of annuities payable that exceeds the amount of the annuity to which the employee would be entitled. No court decree or order would be given effect if it was issued more than 12 months after the date the divorce or annulment becomes final.

The annuity payable to the employee would be reduced by the amount of the annuity payable to the former spouse. This reduction would be disregarded in calculating the amount of any survivor annuity or the reduction of an employee's annuity to provide survivor benefits. In addition, if any annuity is payable to the former spouse of an employee who has retired on disability and the employee is reemployed in the civil service system, the employee's pay would be reduced by the amount of the annuity payable to the former spouse and this amount would be credited to the Civil Service Retirement and Disability Fund.

A former spouse would mean a former wife or husband who was married to an employee for at least 10 years of creditable service. The proportionate share of an annuity would be the percentage of the employee's annuity that equals the percentage that the number of years of marriage during years of creditable service is of the total number of years of creditable service. For example, if a former spouse was married to an employee for 15 of the employee's 20 years of creditable service, the former spouse's proportionate share would be 75 percent. Accordingly, the former spouse would be entitled to 37.5 percent (75 percent of 50 percent) of the employee's annuity.

The bill would provide that no annuity would be payable if the former spouse remarries before age 60.

The annuity of a former spouse would become payable on the later of (1) the day the employee becomes entitled to an annuity or (2) the first day of the month in which the divorce or annulment becomes final. In the case of an employee who retires on disability, the former spouse's annuity would become payable on the later of the date the disability annuity begins or the date the employee would qualify for an annuity on the basis of creditable service. This annuity would terminate on (1) the last day of the month before the former spouse dies or remarries before age 60 or (2) the date the annuity of the employee terminates.

Survivor annuities for former spouses

Under the bill, former spouses of Federal civilian employees would be entitled to a survivor annuity unless a court decree or order has been issued that otherwise concerns the employee's annuity. The amount of the survivor annuity would be 55 percent of the employee's annuity if the former spouse was married to the employee throughout the entire period of creditable service. If the former spouse was not married to the employee throughout the entire period of creditable service, the survivor annuity would equal the former spouse's proportionate share of 55 percent of the employee's annuity. No former spouse, however, would be eligible for a survivor annuity if, prior to commencement of the annuity, the former spouse remarried before age 60.

The survivor annuity would begin on the day after the former employee dies and would end on the last day of the month before the former spouse dies or remarries before age 60. If the survivor annuity is terminated because of remarriage, it would be restored after termination of the remarriage, provided any lump sum that was paid upon the termination of the annuity was repaid to the Civil Service Retirement and Disability Fund.

Under the bill, once a survivor annuity was provided to a former spouse, any other survivor annuities could be provided with respect to an employee only for the portion of the maximum available survivor annuity not allocated to a former spouse. The maximum available survivor annuity could not exceed 55 percent of the former employee's annuity. In addition, after a former employee dies, no court order adjusting the survivor annuity of a former spouse would be given effect.

If the former spouse's annuity is terminated, the bill would provide for the recomputation of the employee's annuity and payment as if the employee's annuity had not been reduced previously. The employee would have the right, within one year after receiving notification that the former spouse had died or remarried, to continue receiving a reduced annuity in order to provide a higher annuity to the employee's spouse.

Subject to the overall limitation on the amount of survivor benefits that may be paid (*i.e.*, 55 percent of the employee's annuity), an employee could elect or a court order could provide for an additional survivor annuity to any other former spouse or spouse of an employee. In order to provide this additional survivor annuity, the employee would be required to pass a physical examination.

The additional survivor annuity could be provided by (1) a reduction in the employee's annuity or an allotment from the employee's pay, (2) by a lump sum or installment payments to the fund, or (3) by any combination of (1) and (2). The amount necessary to fund the additional annuity would be calculated actuarially. In addition, the bill would provide that if a former spouse dies or remarries (or a spouse fails to qualify as a former spouse) before the survivor annuity becomes payable, the employee's full annuity would be restored and the employee's contributions for the additional survivor annuity would be refunded. The bill would authorize the Office of Personnel Management (OPM) to prescribe regulations providing for the termination or the reduction of an additional survivor annuity for the spouse when a former spouse dies or remarries before age 60.

To be entitled to an annuity (whether or not it is a survivor annuity), a former spouse would be required to forego any other annuity under the Civil Service Retirement System or, generally, any retirement system of the Federal Government by reason of marriage to someone else.

The annuities paid to former spouses would not be eligible for cost-of-living adjustments under the bill. In addition, under certain circumstances, the annuity paid to a former spouse may be less than the minimum benefit under the system.

The bill would provide that if an employee has a former spouse who is covered by a court order or who is a party to a spousal agreement, and OPM receives written notice of the order or agreement, the amounts of any benefits payable to the former spouse would be governed by the terms of the order or agreement, provided the terms are express with respect to the benefits. However, this rule would not apply if OPM determined that the terms are inconsistent with the general rules relating to former spouses.

Special rules would be provided for the payment of survivor benefits in the case of divorces prior to the effective date of the bill. In addition, the bill would provide a survivor annuity to a former spouse of an employee who died before the effective date if, at the time the employee became entitled to an annuity, the employee and the former spouse were married and the employee did not elect not to provide a survivor annuity.

Survivor benefits

Under present law and the bill, a reduced benefit with a survivor annuity is automatically provided to an employee at retirement unless the employee waives the survivor protection in writing. The bill would extend this provision to apply also when the employee has a former spouse who has not remarried before age 60.

Under the bill, an election to waive or to reduce a survivor annuity would be required to be made by the employee and the employee's spouse. The election would have to be made in writing before a notary public. If an employee has a former spouse, the employee and former spouse could elect jointly to waive a survivor annuity for the former spouse if the election is made by the earlier of (1) before the end of the 12-month period after the divorce or annulment becomes final or (2) at the time of retirement.

The Office of Personnel Management could, by regulations, permit an employee to make an election without consent of the spouse or former spouse if the employee establishes that the spouse or former spouse cannot be located. The bill also would require that OPM annually inform employees of their election rights and, to the extent possible, inform spouses and former spouses of their rights.

Lump sum benefits

Under the bill, a former spouse of an employee would be entitled to a portion of the employee's lump sum benefit paid by reason of separation from service. The amount of the lump sum paid to the former spouse would equal 50 percent of the total lump sum benefit if the former spouse was married to the employee throughout the entire period of creditable service. Otherwise, the former spouse would be entitled to a proportionate share of 50 percent of the lump sum benefit, based on the number of years of marriage during the period of creditable service.

Effective dates

The provisions would be effective one hundred and twenty days after the date of enactment. The provisions relating to the rights of former spouses to any annuity (include survivor annuities) would be effective with respect to an individual who becomes a former spouse of a current or former employee after the effective date.

H. Targeted Jobs Credit to Include Displaced Homemakers (Sec. 110 of S. 888)

Present Law

The targeted jobs tax credit, which applies to wages paid to eligible individuals who begin work for the employer before January 1, 1985, is available on an elective basis for hiring individuals from one or more of 9 target groups. The target groups are (1) vocational rehabilitation referrals; (2) economically disadvantaged youths aged 18 through 24; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvantaged cooperative education students; (7) economically disadvantaged former convicts;

(8) AFDC recipients and WIN registrants; and (9) disadvantaged youths aged 16 or 17 for summer employment (effective for those who begin work for an employer after April 30, 1983).

The credit is equal to 50 percent of the first $6,000 of qualified first-year wages and 25 percent of qualified second-year wages paid to a member of a targeted group. Thus, the maximum credit is $3,000 per individual in the first year of employment and $1,500 per individual in the second year of employment. The employer's deduction for wages, however, must be reduced by the amount of the credit.

The credit is subject to several limitations. For example, wages may be taken into account for purposes of the credit only if more than one-half of the wages paid during the taxable year to an employee are for services in the employer's trade or business. In addition, wages for purposes of the credit do not include amounts paid to an individual for whom the employer is receiving payments for on-the-job training under a Federally-funded program.

For purposes of determining the years of employment of an employee and whether the $6,000 cap has been reached with respect to any employee, all employees of any corporation that are members of a controlled group of corporations are treated as if they are employees of a single corporation. Under the controlled group rules, the amount of credit allowed to the group is generally the same which would be allowed if the group were a single company. Comparable rules are provided for partnerships, proprietorships, and other trades or business (whether or not incorporated) under common control.

The credit may not exceed 90 percent of the employer's tax liability after being reduced by other nonrefundable credits. Excess credits may be carried back three years and carried forward fifteen years.

Explanation of the Bill

S. 888

The bill would add displaced homemakers as a targeted group for purposes of the targeted jobs tax credit. A displaced homemaker would be defined as an individual who:

(1) has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members;

(2) has been dependent on public assistance or on the income of another family member but is no longer supported by that income, or is receiving public assistance on account of dependent children in the home; and

(3) is a member of an economically disadvantaged family and is experiencing difficulty in obtaining or upgrading employment.

Effective date

The provision would apply to amounts paid or incurred after enactment to displaced homemakers who begin to work for the employer after that date.

I. Increase in Zero Bracket Amount for Heads of Households (Sec 111 of S. 888)

Present Law

Present law provides special tax rates, which are approximately midway between the rate schedules applicable to single persons and to married couples filing jointly, for individuals who are heads of households. In order to qualify for these rates, an individual must be unmarried and generally must maintain a household that includes the individual and a dependent relative. The head-of-household rate schedule was established because of Congress' concern that unmarried taxpayers who are required to maintain a household for other individuals have financial responsibilities that are greater than those of other unmarried individuals.

The zero bracket amount for heads of households is $2,300, the same as the zero bracket amount for single taxpayers. The zero bracket amount for married taxpayers who file joint returns is $3,400.

Explanation of the Bill

S. 888

The bill would increase the zero bracket amount for heads of households to $3,400, and would make corresponding changes in the rate brackets of the head-of-household rate schedule.

Effective date

The provision would be effective for taxable years beginning after 1983.

J. Dependent Care Program (Title II of S. 888)

Present Law

Child and dependent care credit

Present law provides a nonrefundable tax credit for a portion of employment-related dependent care expenses paid by an individual who maintains a household that includes one or more qualifying individuals. A qualifying individual is: (1) an individual who is under the age of 15 who is a dependent of the taxpayer; (2) a physically or mentally incapacitated dependent; or (3) a physically or mentally incapacitated spouse.

Employment-related expenses are expenses for household services and expenses for the care of a qualifying individual, if incurred to enable the taxpayer to be gainfully employed. Employment-related expenses that are incurred for services provided outside the taxpayer's household may be taken into account if incurred for the care of an individual under the age of 15, who is a dependent of the taxpayer, or if incurred for the care of a physically or mentally incapacitated spouse or dependent of the taxpayer who regularly spends at least eight hours a day in the taxpayer's household.[34]

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[34] Expenses incurred for services provided outside the taxpayer's household by a dependent care center may be taken into account only if the center complies with all applicable State and

Continued

The maximum amount of employment-related expenses that may be taken into account for purposes of the credit is $2,400 if there is one qualifying individual, and $4,800 if there are two or more qualifying individuals.

The percentage amount of the credit is 30 percent for individuals who have $10,000 or less of adjusted gross income. Thus, the maximum credit is $720, if there is only one qualifying individual, or $1,440, if there are two or more qualifying individuals.

The 30-percent credit rate is reduced (but not below 20 percent) by one percentage point for each $2,000 (or fraction thereof) of adjusted gross income above $10,000. (For this purpose, a married couple's combined adjusted gross income is the relevant amount, because married couples generally must file a joint return in order to claim the credit.) For example, an individual with $11,000 of adjusted gross income is entitled to a credit equal to 29 percent of employment-related expenses. Likewise, an individual with $20,000 of adjusted gross income is entitled to a credit equal to 25 percent of employment-related expenses. Individuals with more than $28,000 of adjusted gross income are entitled to a credit equal to 20 percent of employment-related expenses. For those individuals, the maximum credit is $480 (one qualifying individual) or $960 (two or more qualifying individuals).

Tax treatment of dependent care organizations

Under present law, organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and which meet certain other requirements are exempt from Federal income tax. One of these requirements prohibits any of the net income of the organization from inuring to the benefit of any private shareholder or individual[35] In addition, contributions to such organizations are deductible for Federal income, gift, and estate tax purposes (secs. 170(c)(2), 2055(a), and 2522(c)).

The Internal Revenue Service takes the position that an organization which is organized and operated exclusively to provide care to children in order to allow a parent of a child to be gainfully employed is not an educational organization because its principal activity is not to provide education to children, but to provide day care facilities for the benefit of the parents.

Explanation of the Bill

1. Child and dependent care credit

The bill would increase the percentage of employment-related expenses that qualify for the credit and would make the credit refundable. Thus, the credit could exceed an individual's tax liability.

The percentage amount of the credit would be 50 percent for individuals who have $10,000 or less of adjusted gross income. Thus, the maximum credit would be $1,200, if there is only one qualifying individual, or $2,400, if there are two or more qualifying individ-

local laws and regulations. For purposes of this provision, a dependent care center is any facility that provides care for more than six individuals (other than residents) and receives a fee, payment, or grant for providing services for any of the individuals.

[35] Sec. 501(c)(3).

uals. This 50-percent credit rate would be reduced (but not below 20 percent) by one percentage point for each full $1,000 of adjusted gross income above $10,000. For example, an individual with $11,000 of adjusted gross income would be entitled to a credit equal to 49 percent of employment-related income. Likewise, an individual with $20,000 of adjusted gross income would be entitled to a credit equal to 40 percent of employment-related expenses. Individuals with $40,000 or more of adjusted gross income would be entitled to a credit equal to 20 percent of employment-related expenses. For these individuals, the maximum credit would be $480 (one qualifying individual) or $960 (two or more qualifying individuals). This is the same credit amount available under present law to individuals with more than $28,000 of adjusted gross income. Thus, the bill would increase the credit available for individuals with adjusted gross incomes of less than $40,000, relative to present law.

Effective date

The change to the child and dependent care credit would be effective for taxable years beginning after December 31, 1983.

2. Tax treatment of dependent care organizations

The bill would provide that organizations are tax exempt, and are eligible to receive tax deductible contributions, if (1) the organization is organized and operated to provide nonresidential dependent care of individuals, (2) substantially all of the dependent care is provided by the organization to enable individuals to be gainfully employed, and (3) the services provided by the organization are available to the general public.

Effective date

The provision would be effective for taxable years beginning after December 31, 1983.

3. Child care information and referral services

This provision of the bill contains a listing of concerns regarding child care and child care services. The purpose of this section of the bill would be to:

(1) Make efficient use of available child care resources by creating centralized systems for matching families' needs for child care services with appropriate child care providers;

(2) Document, at the local level, supply and demand of child care providers and users;

(3) Facilitate an educated choice for parents of appropriate child care according to needs and preferences; and

(4) Stimulate, and increase the number of, child care providers by making available information on local needs and preferences for child care services.

The bill would require the Secretary of Health and Human Services, through the Commissioner of the Administration of Children, Youth, and Families to establish a grant program to assist public or private nonprofit organizations in the establishment or operation of community-based child care information and referral centers. A public or private nonprofit organization that desired to receive a grant from the Secretary would be required to submit an application to the Secretary describing the manner in which the center would be established or operated, containing an estimate of the cost of establishing and operating the center, and including such other information as the Secretary determined to be necessary.

In evaluating applications for grants, the Secretary would be required to consider the demonstrated or potential ability of applicants to provide services. Funds would be made available to an applicant only if the applicant provides adequate assurances that the funds would be used solely for the establishment or operation, or both, of a child care information and referral center and that any center to be funded under this provision would provide information to interested persons only with respect to providers of child care services that meet applicable State and local licensing and registration requirements. In addition, the applicant would have to assure that, in each year of participation in the grant program, any center receiving funding would obtain the following percentages of its projected budget through non-Federal sources: (a) at least 25 percent in the first and second year, (b) at least 50 percent in the third year, and (c) at least 65 percent in the fourth and fifth year. A center would be ineligible for further Federal funding after its fifth year.

The maximum grant to any applicant, for any fiscal year, would be $75,000. The bill would authorize an appropriation of $8,000,000 per fiscal year to carry out this provision.

Each center that is funded under this provision would have to submit to the Secretary an annual report concerning its activities. This report would be due within 90 days after the end of each fiscal year. In addition, the Secretary would be required to submit a report to the House Committee on Education and Labor and the Senate Committee on Labor and Human Resources, no later than 160 days after the close of each fiscal year.

Effective date

This provision would take effect on October 1, 1983.

K. Nondiscrimination in Insurance (Title III of S. 888)

Present Law

Generally, an insurer decides whether to make insurance available to an applicant and determines the terms, benefits, and premiums for the insurance based on a measurement of the risk involved in the insurance. Under present law, to measure the risk, an insurer is allowed to use statistical data that may show statistically significant differences in risk between groups of people based on sex or other factors. For example, an insurer may charge women lower life insurance premiums than men for the same benefits, based on mortality (life expectancy) tables which show that women generally live longer than men.

Although longer life expectancies result in lower life insurance premiums for women, the opposite occurs in the case of annuity or pension benefits. In the case of an annuity, the insurer anticipates that more payments will be required to satisfy the requirements of the contract if the annuity is measured by the life of a woman than by the life of a man. Insurers have customarily charged higher rates for annuities for women.

Instead of relying on statistical tables to calculate risks, an insurer may rely on experience. For example, an insurer may initially charge an employer the same premiums for providing group health insurance to two different groups of the employer's employees. If claims against the insurer are lower than anticipated for one of the group plans, the insurer may refund a portion of the premiums paid with respect to that group. Effectively, the insurance costs less for the group with lower claims. The result could be the same as if the difference between the two groups had been determined accurately from statistical tables.

Explanation of the Bill

Findings and policy

The bill would provide that the Congress finds that discrimination based on race, color, religion, sex, or national origin by any insurer in connection with providing insurance has the following effects: (1) it burdens the commerce of the Nation; (2) it impairs the economic welfare of consumers who rely on the protection of the insurance; (3) it constitutes an unfair trade practice which adversely affects commerce; and (4) it makes it difficult for employers to comply with Federal laws prohibiting discrimination against their employees.

The bill would declare that it is the policy of the United States that no insurer should be allowed to refuse to make insurance available, to tréat any applicant or insured differently from any other applicant or insured with respect to the terms of an insurance contract, or to otherwise discriminate on the basis of race, color, religion, sex, or national origin. The bill also provides that it would not, in general, affect the responsibility and authority of States to regulate insurance.

Unlawful discriminatory actions

The bill provides generally that an insurer would not be allowed to discriminate on the basis of race, color, religion, sex, or national origin when providing insurance of the type ordinarily provided by the insurer. The prohibition against discrimination would include all aspects of the negotiation, pricing, and other requirements of the insurance contract. In particular, the bill provides that an insurer would not be allowed to discriminate by refusing to negotiate a contract or by delaying the processing of an application for insurance. The bill also provides that an insurer would not be allowed to publish any statements that indicate a policy of discrimination in the availability or terms of insurance products. An insurer would also be prohibited from discriminating against anyone who opposed the provisions of the bill. In addition, an insurer would not be allowed to use statistical data that discriminates on the basis of race, color, religion, sex, or national origin. This would mean, for example, that an insurer could no longer rely on sex-distinct mortality or disability tables. Pension plans could be considered insurers under the bill.

With respect to existing insurance contracts, it would be an unlawful discriminatory action for an insurer to use a criterion that violates the provisions of the bill to (1) charge or collect premium payments, or (2) determine or pay benefits. The provision with respect to existing contracts would apply to payments charged or due after the effective date of this bill, or benefits determined or paid after the effective date of this bill. The insurer would be allowed to modify the premiums and increase, but not decrease, the benefits paid under existing contracts if clearly necessary to comply with the nondiscrimination provisions of this bill. For this rule to apply, the State agency having jurisdiction to regulate insurance must concur that the modification is necessary and must authorize the modification. The insurer need not, however, refund premiums or increase benefits which are payable to or by the insurer prior to the effective date of the provision.

The provisions of the bill would not prevent an insurer who provides insurance coverage solely to persons of a single religious affiliation from continuing to provide insurance on that basis.

State or local enforcement

The bill provides that State and local authorities would have the opportunity to enforce any applicable State and local antidiscrimination laws before a civil action could be brought against the insurer by an aggrieved person. The enforcement provision would apply, however, only if State or local law requires written notification of an alleged discriminatory action within 180 days (or the time prescribed by State or local law if not less than 180 days) after the alleged discriminatory action occurs. If State or local law imposes any requirement other than written notification within 180 days, the proceeding would be deemed to have been commenced for purposes of this provision when the written notice was filed. No suit would be allowed to be filed by an aggrieved person against the insurer until 60 days after the State or local authority received the required notice unless any proceeding by the State or local authority is terminated earlier.

Where the alleged discriminatory action is continuing in character, the 180 days would be computed from the last day on which the continuing discriminatory action occurred.

Civil action by or on behalf of aggrieved person

Under the bill, an aggrieved person would be allowed to bring a civil action against the insurer if either (1) there is no applicable State or local antidiscrimination law, or (2) the State or local authority failed to commence proceedings or enter into a conciliation agreement, to which the aggrieved person is a party, within 60 days of the required written notification. Such civil action could be instituted in any State court having jurisdiction under State law or in a United States district court having jurisdiction. Generally, the bill would require that the suit must be filed not later than 90 days after notification or 180 days after the alleged discriminatory action occurred, whichever is later. Under some circumstances, the court could appoint an attorney for the complainant and could authorize the commencement of the action without the payment of fees, costs, or security. Upon request of the State or local authority or any party to the suit, the court could stay further proceedings, for not more than 60 days, pending the termination of State or local proceedings.

Civil action by the Attorney General

The bill provides that the Attorney General could bring a civil action in any United States district court against any person or persons engaged in a pattern or practice of resistance to the provisions of this bill, or responsible for a denial of rights under this bill if the denial raises an issue of general public importance.

Jurisdiction

Any civil action under the provisions of this bill would be brought, without regard to the amount in controversy, in the United States district court of any judicial district in the State in which the alleged discriminatory action occurred, the insurer's principal office is located, the insurer maintains relevant records, the insurer resides or is located, the insurer is incorporated, or the insurer transacts business. The bill provides that the case must be heard at the earliest practicable time and expedited in every way.

Judicial relief

If the court determines that the insurer has committed a discriminatory action, the court could (1) enjoin any discriminatory action in the future; (2) order the amendment of the insurance contract to conform with the requirement of the bill; (3) require reimbursement of the aggrieved person for actual damages, including reimbursement of excess premiums or reimbursement for inadequate benefits; (4) require the payment of punitive damages, in addition to actual damages, of not more than $25,000 for each individual plaintiff, and $800,000 in the case of a class action; (5) allow the aggrieved person reasonable attorney fees; (6) order other relief as the court deems appropriate; and (7) utilize the sanction of contempt to enforce its orders.

In determining punitive damages, the court could consider, among other factors, the amount of actual damages awarded, the frequency and persistence of failure to comply with these provisions, the respondent's resources, the number of people affected, the extent to which the respondent was enriched, and the extent to which failure to comply was intentional.

Inapplicability

Nothing in the bill would be deemed to modify any provision of the Social Security Act, to modify discrimination in employment laws, or to exempt any person from punishment under any State or local law, except to the extent that any such law permits discriminatory action under this bill.

Effective date

The nondiscrimination in insurance provisions of the bill would become effective on the 90th day after enactment.

L. Regulatory Reform and Gender Neutrality (Title IV of S. 888)

Revision of regulations, etc., and legislative recommendations

Section 401 of the bill would require each Federal agency head (1) to develop and implement proposals to make, to the extent practicable, all rules, regulations, guidelines, programs, and policies of the agency neutral as to sex and (2) to develop and transmit to the Congress proposals to alter any laws, to the extent practicable, that their implementation, administration, or enforcement does not result in discrimination on the basis of sex.

In addition, each Federal agency head would be required (1) to conduct an ongoing review of the rules, regulations, guidelines, programs, and policies of the agency to identify all such rules, regulations, guidelines, programs, and policies that result in different treatment based on sex, and (2) to submit annually a report to the Congress on such review, including a detailed description of the agency's progress in developing and implementing proposals to make, to the extent practicable, all rules, regulations, guidelines, programs, and policies of the agency neutral as to sex.

Rule of statutory construction relating to gender

Section 402 of the bill would amend section 1 of title 1 of the U.S. Code to provide that: "Unless otherwise specifically provided in an Act of Congress with respect to such Act or any provision thereof, all words of such Act or provision importing one gender include and apply to the other gender as well."

Effective date

The provisions would be effective on the date of enactment.

M. Child Support Enforcement (Title V of S. 888)

1. Purposes of the program

Present law

As a condition of having an approved program of Aid to Families with Dependent Children (AFDC) under Part A of title IV of the Social Security Act, States are required also to operate effective child support programs under part D of the Act and to make child support-related services available both to families receiving AFDC and to nonwelfare families. Funding is provided at a 70 percent federal matching rate on an open-ended entitlement basis. The authorization clause in section 451 of the Act describes the purposes of the program as being those of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity, and obtaining child support.

Explanation of the bill

The bill would provide that the purpose of the program is to assure compliance with obligations to pay child support to each child in the United States living with one parent. The purposes states in the present law would be described as means of achieving this purpose.

2. Withholding of child support from tax refund checks

Present law

Under section 464 of the Social Security Act and section 6402(c) of the Internal Revenue Code, the Secretary of the Treasury, at the request of a State, will withhold past-due child support payments from tax refund checks due to absent parents. This action is only authorized if the past-due support has been assigned to the State because the family is receiving AFDC. The amount of the delinquency must have been determined under a court order, or an order of an administrative process established under State law, for the support and maintenance of a child or of a child and the parent with whom the child is living.

Explanation of the bill

Both the Social Security Act provision and the Internal Revenue Code provision dealing with collection of past-due support from Federal tax refunds would be extended to apply also to child support obligations for other families (*i.e.*, nonwelfare families) which a State has agreed to collect. The tax refunds paid over to a State, in satisfaction of past-due support for such nonwelfare families would be reduced by any fees imposed by the State to cover the costs of collection prior to distribution to the child or parent to whom the support is owed.

Effective date.—The amendments made to the provisions relating to the collection of past-due support would become effective 90 days after enactment.

3. Child support clearinghouse

Present law

The Social Security Act provides for the establishment of State plans for child support. Among other requirements, such a State plan must provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system.

Explanation of the bill

The bill would require a State plan for child support to provide that the State will maintain a child support clearinghouse or comparable procedure. Payments for the support and maintenance of a child, and payments for the support and maintenance of a child and the parent with whom the child is living, which are owed by absent parents residing or employed in the State, pursuant to any court order that is issued, modified, or enforced after December 31, 1983, would be recorded through the State's child support clearinghouse.

In the case of children residing in the State, support payments would be paid into the clearinghouse, recorded, and forwarded to the children (or, in the case of AFDC families, distributed pursuant to section 457 of the Social Security Act). In the case of children residing in another State, payments would be paid, recorded, and forwarded to the child support clearinghouse in such other State, with appropriate arrangements with such other States to avoid duplication of collections where an individual resides in one State and is employed in another State.

The State child support clearinghouse would be required to maintain a full record of collections and disbursements. Furthermore, the child support clearinghouse would be required to have a system for reporting support obligations owed, collected, and disbursed, and for notifying the appropriate courts and State agencies when payments are not made in a timely manner or the correct amount of such payments are not made, for the purpose of taking enforcement actions.

Effective date.—The provision would become effective on January 1, 1985.

4. Strengthening of State child support enforcement procedures

Present law

The Social Security Act provides for the establishment of State plans for child support. The Act presently specifies 16 elements that must be included in a State plan.

Explanation of the bill

The bill would amend the Social Security Act provision dealing with State plans for child support. State plans for child support would be required to contain the following provisions, in addition to those already required under present law:

(1) A provision that the State seek medical support for children for whom it is seeking financial support when such medical support from an absent parent would be available at a reasonable cost through employment-related health care or health insurance;

(2) Mandatory withholding and payment of past-due support from wages when such support has been past due for two months, as determined through the child support clearinghouse;

(3) A procedure for imposing liens against property and estates for amounts of past-due support owed by an absent parent residing in the State;

(4) In the case of a State that imposes an income tax, a provision that past-due support owed by an absent parent residing or employed in the State will be withheld and collected from any refund of tax payments that would otherwise be payable to the absent parent; and

(5) Quasi-judicial or administrative procedures to aid in the establishment, modification, and collection of support obligations and in the establishment of paternity.

In addition, a State plan would be required to contain at least three of the following five requirements:

(1) Voluntary wage assignments for payment of support obligations;

(2) The use of highly accurate scientific testing (as determined by the Secretary of Health and Human Services) to determine paternity;

(3) The imposition of security, a bond, or another type of guarantee to secure support obligations of absent parents who have a pattern of past-due support;

(4) A procedure whereby a proceeding to establish paternity may be carried out without the participation of the alleged father if he refuses to cooperate in establishing paternity; and

(5) Use of an objective standard to guide in the establishment and modification of support obligations by measuring the amount of support needed and the ability of an absent parent to pay such support, such that comparable amounts of support are awarded in similar situations.

Effective date.—Each State would be required to comply with five of the additional requirements prior to January 1, 1985. Eight of the requirements would have to be met prior to January 1, 1986.

5. Exception to discharge in bankruptcy

Present law

Under present law, a discharge under the Bankruptcy Act does not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation, divorce decree, or property settlement agreement, except to the extent that (a) the debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act), or (b) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Explanation of the bill

The bill would amend the Bankruptcy Act to provide that a discharge in bankruptcy would not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, without regard to whether the debt is in connection with a separation, divorce decree, or property settlement agreement.

Effective date.—The provision would be effective upon enactment.

6. Allotment of Federal pay for child and spousal support

Present law

Under present law,[36] the pay of a Federal employee is subject to any writ, order, summons, or other similar process the purpose of which is to make an allotment from such pay in order to satisfy a legal obligation of the employee to provide child support or to make alimony payments. In addition, under present law, the head of each Federal agency may establish procedures under which each employee of the agency is permitted to make allotments and assignments of amounts out of pay for such purpose as the agency head considers appropriate. Federal wages are subject to court-ordered garnishment for the enforcement of child support and alimony.

[36]Section 459 of the Social Security Act.

Explanation of the bill

The bill would provide that in any case in which child support payments or child and spousal support payments are owed by an employee under a support order meeting the criteria specified in section 303(b)(1)(A) of the Consumer Credit Protection Act,[37] allotments from the pay of the employee will be made if the court issuing the order provides notice of such order in accordance with regulations to be prescribed. These regulations would (1) designate the person to whom any notice is to be given; (2) prescribe the form and content of any notice; and (3) set forth any other rules necessary to implement this provision.

The amount of any child support or child and spousal support allotment would be the amount necessary to comply with the court order. However, the amount of the allotment, together with any other amounts withheld for support from the pay of the employee, could not exceed the limits prescribed in section 303(b) of the Consumer Credit Protection Act. Under those limits, the maximum part of the aggregate disposable earnings of an individual for any work week which would be subject to an allotment for support generally could not exceed (1) 50 percent of the individual's disposable weekly earnings, if the individual is supporting a spouse or dependent child (other than a spouse or child with respect to whose support the allotment is used), or (2) 60 percent of the individual's disposable weekly earnings, if the individual is not supporting a spouse or dependent child.

Any allotment made under this provision would be adjusted or discontinued upon notice from the court.

Effective date.—The allotment provisions would be effective with respect to court orders first issued after the date of enactment.

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[37]That is, any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.