Joint Committee on Taxation
March 20, 1986
JCX-2-86

ADDITIONAL TECHNICAL CORRECTIONS TO THE RETIREMENT EQUITY ACT OF 1984

Certain technical corrections to the Retirement Equity Act of 1984 (REA) (considered in a committee markup September 27, 1985) were included in Title XV of H.R. 3838, as reported by the Committee on Ways and Means (H. Rep. No. 99-426, December 7, 1985). These technical amendments were dropped from the version of H.R. 3838 passed by the House of Representatives on December 17, 1985.

The following items are additional technical corrections not previously considered by the Committee on Ways and Means, additional items to be clarified in the legislative history of the REA technical corrections, and a miscellaneous amendment to ERISA.

A. Additional Technical Corrections to REA

1. The tax treatment of a rollover of a qualifying total distribution of a participant's partially vested account balance would be conformed with the tax treatment accorded a rollover of a partial distribution of a participant's account balance.

2. The provisions relating to the period during which a plan must permit repayment of mandatory employee contributions, presently applicable to defined contribution plans, would be extended to defined benefit plans.

3. The effective date of the provisions requiring spousal consent to a plan loan secured by a participant's accrued benefit would be conformed to the effective date of similar provisions of Treasury regulations (August 18, 1985), rather than to the date of introduction of the technical corrections bill (H.R. 2110, April 18, 1985).

4. The accrued benefit on which survivor benefits are based would be reduced by the amount of any participant loan outstanding at the date of the participant's death. The reduction would not be permitted, however, unless the participant's accrued benefit was used as security for the loan and any required spousal consent was obtained at the time the accrued benefit was used as security.

5. The application of the survivor benefit rules to a disability benefit under a pension plan would be clarified. Under this clarification, the commencement date of a disability benefit would be treated as a participant's annuity starting date and would trigger application of the joint and survivor annuity provisions only if the disability benefit is not an ancillary benefit. If a disability benefit is an ancillary benefit, the participant's annuity starting date would be determined without regard to the time that the disability benefit commenced. Under the proposed technical correction, if the participant died after disability benefits began, but before the earliest retirement age, a qualified preretirement survivor annuity would be required, unless waived with spousal consent.

6. The effective date of the provisions in the original technical corrections bill (H.R. 2110, April 18, 1985) liberalizing Treasury regulations relating to the form of spousal consent would be retroactive to the original effective date of REA (January 1, 1985) in order to prevent disqualification of plans that relied on the technical corrections bill.

7. The payment to an alternate payee of any portion of a participant's accrued benefit pursuant to a qualified domestic relations order would not constitute the garnishment of the participant's wages and, thus, would not be subject to any Federal or State law restrictions on garnishments.

8. The rule requiring the pro-rata allocation of a participant's basis in the plan in the case of benefit payments under a qualified domestic relations order would not cause an allocation between the participant and an alternate payee of the benefit included in the income of the participant.

B. Additional Items to be Clarified in Legislative History

1. For purposes of the spousal consent rules, in the case of an individual who is outside the United States, spousal consent could be witnessed by the equivalent of a notary public in the jurisdiction in which consent is executed.

2. The provision in REA permitting Treasury regulations to specify the conditions under which spousal consent is not required would be expanded to permit regulations to include a situation in which the participant has been abandoned (within the meaning of local law) by the spouse, even if the participant knows where the spouse is located.

3. The legislative history would clarify that, for purposes of determining the applicability of the survivor benefit requirements and the amount of a survivor benefit required to be paid, the plan can disregard amounts payable to an alternate payee under a qualified domestic relations order.

4. The qualified domestic relations provisions would not prevent the payment of amounts to a State agency that is an agent of an alternate payee or if the alternate payee consents to such payment (for example, to meet the requirements relating to Aid to Families with Dependent Children).

5. The legislative history would direct Treasury to provide further guidance on the interaction of the REA break-in-service rules with the elapsed time method of crediting service.

6. The legislative history would provide that, if a plan administrator determines that a qualified domestic relations order is effective before the expiration of the 18-month suspension period, the plan administrator may delay payment of a participant's benefit until the expiration of the 18-month period if the plan administrator has notice that the parties are attempting to rectify any deficiencies in the order.

7. The legislative history would clarify that a TEFRA section 242(b) election would not be invalidated because a plan secures spousal consent to the election.

8. The present value of a participant's and an alternate payee's benefits under a qualified domestic relations order would not be aggregated for purposes of determining whether the $3,500 threshold for involuntary cashouts is reached.

C. Miscellaneous ERISA Amendment

1. The labor law provisions of ERISA would be modified to provide that a loan to an owner-employee from a pension plan would not be treated as a prohibited transaction if approved under a special exemption procedure of the Department of Labor. This rule would conform the ERISA provision to the treatment currently provided to owner-employees under the prohibited transaction provisions in the Internal Revenue Code.