Notes and Brief Reports

The Retirement Equity Act of 1984: A Review*

Last summer, Congress passed and on August 23, 1984, President Reagan signed into law the Retirement Equity Act (REA) of 1984.[1] This major piece of pension legislation amends the Employee Retirement Income Security Act (ERISA)[2] and the Internal Revenue Code (IRC)[3] primarily in response to public concerns that working women are not receiving their fair share of private pension benefits.

In particular, concerns were expressed that ERISA's participation and vesting rules caused many women who entered the labor force early and took time out for childrearing to fail to obtain a "vested" or nonforfeitable right to their retirement benefits. Moreover, many widows of workers with vested benefits were discovering that the benefits they assumed were nonforfeitable were in fact lost when their spouses died before becoming eligible to retire. Confusion also existed over whether ERISA preempted State divorce laws, thereby preventing pension plans from complying with domestic relations court orders allocating to a spouse a portion of the worker's pension as part of a property settlement.

REA attempts to address these concerns by acknowledging the working patterns of women as well as the special needs of surviving and divorced spouses. In general, REA includes new rules that:

(1) lower the minimum age requirement for pension plan participation;
(2) increase the years of service counted for vesting purposes;
(3) liberalize the break-in-service rules for vesting purposes;
(4) prevent plans from counting maternity and paternity leave as a break in service for participation and vesting purposes;
(5) require qualified pension plans to provide automatic survivor benefits and allow for waiver of survivor benefits only with the consent of the participant and the spouse;
(6) clarify that pension plans may obey certain domestic relations court orders requiring them to make benefit payments to a participant's former spouse (or another alternative payee) without violating ERISA's prohibitions against assignment or alienation of benefits; and
(7) expand the definition of accrued benefits protected against reduction.

Other provisions in the new law do not specifically relate to the treatment of women under pension plans but address perceived deficiencies in ERISA that apply across the board to all pension plan participants. These new provisions add recordkeeping and notice requirements and are discussed briefly.

The new rules under REA generally take effect for plan years beginning after December 31, 1984. The effective date for collectively bargained plans is the plan year beginning on or after the expiration of the last collective bargaining agreement, or, if earlier, the plan year beginning on or after January 1, 1987. As will be noted throughout this review, however, some provisions take effect immediately.

Minimum Participation Requirements

Retirement plans that meet certain requirements prescribed in the IRC and in ERISA are called "qualified retirement plans."[4] The requirements are lengthy, com-

* By Edmund T. Donovan, Office of Research, Statistics, and International Policy, Office of Policy, Social Security Administration.

[1] Retirement Equity Act of 1984, Public Law 98-397.

[2] The Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829 (codified as amended in scattered sections of the Internal Revenue Code (IRC, West 1983) & 29 U.S.C.A. Sections 1001-1381 (1975 & Supp. 1984) hereinafter ERISA). The structure of ERISA is complex because it is enforced by both the Labor and Treasury Departments. Title I of ERISA, which applies to all pension plans, is concerned with the protection of employee benefits and includes sections on (1) reporting and disclosure, (2) participation and vesting, (3) funding, and (4) fiduciary responsibility. The reporting, disclosure, and fiduciary provisions replace the Welfare and Pension Plans Disclosure Act of 1958 and are enforced primarily by the Department of Labor. The Treasury Department has primary jurisdiction over participation, vesting, and funding. Title II contains the same provisions as title I with respect to participation, vesting, and funding, but in the context of conditions that must be satisfied for qualification of a plan. Title II is in effect an amendment to the Internal Revenue Code of 1954. But while failure to meet the participation or vesting standards may result in tax disqualification, the funding requirements are enforced by financial penalties. For a more complete discussion, see Dan M. McGill, **Fundamentals of Private Pensions**, Richard D. Irwin, Inc., 1984, chapters 2, 4-11.

[3] Unless otherwise indicated, all references are to the 1954 Internal Revenue Code as amended, and the regulations thereunder.

[4] IRC section 401(a) (West 1983) prescribes most of the formal requirements these plans must satisfy to qualify for special tax treatment. Some of the substantive requirements are actually described in section 401 but others are found in later Code sections and are incorporated in section 401 by reference.

plex, and include certain minimum participation standards.[5] The minimum participation standards are designed to assure prompt participation in retirement plans by eligible employees, to restrict exclusion of employees from plan coverage by reason of advanced age, and to protect rehired employees so that short interruptions in covered service do not result in lengthy periods of nonparticipation in the plan.

Under prior law, a qualified retirement plan could require employees with 1 year of service to be 25 years old before allowing them to participate or accrue benefits under the plan. The law provided that an employee could be excluded from participating in a retirement plan until he or she reached age 25 or completed 1 year of service, whichever came later.[6] No provision required that persons under age 25 be admitted to participation, regardless of their length of service. Retirement plans maintained exclusively for employees of an educational institution by a tax-exempt employer were permitted to exclude persons under age 30 from coverage if all employees covered under the plan were fully vested after completing 1 year of service.[7]

The Retirement Equity Act lowers the minimum age of mandatory participation to age 21 for employees with 1 year of service. Educational organizations that could require employees to be aged 30 and to have worked a year before becoming plan participants must now cover workers with a year of service beginning at age 26. The new minimum participation rules do not apply retroactively, however. Thus, for example, a 24-year old worker with 3 years of service will become a plan participant when the new requirement goes into effect, but his 3 years of service need not be counted as years of participation toward benefit accruals.

Vesting Requirements

Crediting years of service. Credited service is the yardstick for determining benefits under qualified retirement plans. Credited service must be computed to determine (1) whether or not an employee is eligible to participate in a qualified plan; [8] (2) whether or not any portion of an employee's benefits is "vested," that is, nonforfeitable; [9] and (3) what benefit has actually accrued to a plan participant.[10]

The basic period used for determining credited service for participation eligibility and vesting purposes is the year of service. Years of participation are used for benefit accrual purposes. The units used in computing both of these periods of service are defined in terms of the number of hours of service credited to an employee during a specified computation period, generally a consecutive 12-month period. For participation eligibility and vesting purposes, a "year of service" is the completion of 1,000 or more hours of service during a particular computation period.[11]

Increase in service years counted for vesting purposes. An employee's right to the accrued benefit derived from his or her own contributions under a qualified retirement plan must be vested at all times.[12] Benefits attributable to employer contributions must be fully vested when the employee attains normal retirement age.[13] The rate at which an employee, before reaching normal retirement age, acquires a vested interest in his or her accrued benefit attributable to employer contributions must satisfy one of the following three alternative minimum vesting schedules:

> **Alternative 1,** the 10-year or cliff vesting [14] rule, requires that an employee's accrued benefit derived from employer contributions be 100 percent vested after 10 years of service. No interim vesting is required, although it may be offered.
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> **Alternative 2,** the 5 to 15-year or graded vesting [15] schedule, is satisfied if an employee who has completed at least 5 years of service obtains at least a 25 percent vested interest in his or her accrued benefit derived from employer contributions, and if the vested interest increases 5 percent each year during the next 5 years, and an additional 10 percent each year during the following 5 years. Accordingly, benefits must be fully vested after 15 years of service regardless of age.
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> **Alternative 3,** the rule of 45,[16] provides that any employee with 5 or more years of service must acquire at least a 50 percent vested interest in his or her accrued benefit derived from employer contributions whenever the sum of age and service equals or exceeds 45 with an additional 10 percent vesting in each subsequent year until the benefits become fully vested. In all cases, the benefits must be 50 percent vested after 10 years of service, regardless of the participant's age and there must be 10 percent additional vesting for each year thereafter.

Under prior law, an employee's years of service after age 22 had to be counted when the plan vested according to either alternative 1 or 2. Alternative 3 counts all years of service with the employer if during those years the employee participated in the plan.

[5] ERISA section 202(a) and IRC section 410(a). Section 410 includes the provisions of ERISA section 202, but adds requirements relating to plan coverage of employee groups to limit discrimination in favor of officers, shareholders, and highly compensated employees ("the prohibited group").

[6] ERISA section 202(a)(1)(A)(i) and IRC section 410(a)(1)(A)(i).

[7] ERISA section 202(a)(1)(B)(ii) and IRC section 410(a)(1)(B)(ii).

[8] ERISA section 202 and IRC section 410.

[9] ERISA section 203 and IRC section 411(a). IRC section 411 largely mirrors ERISA section 203, but includes additional vesting requirements in the event of discrimination in favor of the "prohibited group" or the partial or complete termination of a plan or the discontinuance of contributions.

[10] ERISA section 204 and IRC section 411(b).

[11] ERISA section 202(a)(3)(A) and IRC section 410(a)(3)(A).

[12] ERISA section 203(a)(1) and IRC section 411(a)(1).

[13] ERISA section 203(a)(2) and IRC section 411(a)(2).

[14] ERISA section 203(a)(2)(A) and IRC section 411(a)(2)(A).

[15] ERISA section 203(a)(2)(B) and IRC section 411(a)(2)(B).

[16] ERISA section 203(a)(2)(C) and IRC section 411(a)(2)(C).

The new law now requires that all service performed after age 18 be counted when calculating the vested portion of a worker's benefit. The new rules for counting service under alternatives 1 and 2 apply to anyone with at least an hour of service after the provision takes effect.

Effect of Changes in Participation and Vesting Requirements on Workforce

The Employee Benefit Research Institute (EBRI) recently published estimates of the number of workers likely to benefit from the changes in participation and vesting requirements brought about by REA.[17] Using a simulation model and new survey data, EBRI estimated that REA will add around 583,000 new participants and 325,000 new vested workers in 1985. Although new participants are more likely to be women, slightly more than half of all the new vested workers are expected to be men. In all, the number of workers affected by the new participation and vesting requirements is less than 1 percent of the Nation's total labor force of more than 100 million. The actuarial costs of these new requirements are estimated not to exceed $233 million, although increased administrative costs could significantly increase that cost.

Break in Service Rules

Break in service defined. A qualified retirement plan may provide that for participation eligibility and vesting purposes an employee incurs a 1-year break in service for a consecutive 12-month period in which he or she is credited with 500 or fewer hours of service (or the equivalent).[18] A break in service may result in loss of credit for prebreak years of service for participation and vesting purposes.

Service following a break in service. Before REA was enacted, defined benefit plans (those providing a definite schedule of benefits) were allowed to disregard, for participation and vesting purposes, the service years of nonvested employees before a break in service if the number of consecutive break-in-service years equaled or exceeded the number of years of service before the break.[19] This provision is referred to as the "rule of parity." To illustrate, assume an employee leaves her employer to have a child after completing 3 years of service and when she has no vested benefit from employer-derived contributions. She is reemployed after incurring 4 consecutive 1-year breaks in service. Under prior law, the employee's 3 years of service could be disregarded since she had no vested rights under the plan and her consecutive 1-year breaks in service exceeded the number of her prebreak years.

Under REA, defined benefit plans will now have to count prebreak years of service for participation and vesting purposes unless the number of consecutive 1-year breaks in service is equal to or greater than five or the aggregate number of years of service before the break occurred. This rule applies only to nonvested participants; the service of workers with any vested benefit in a defined benefit plan is already protected by ERISA.

This new break-in-service rule for defined benefit plans permits employees to leave their employer for up to 5 years early in their careers while retaining credit for their initial period of service if they are rehired. It is designed to accommodate working patterns of women who leave the workforce for several years to care for their children. It also protects employees who remain in the workforce but work for another employer for a time and then return to a previous employer.

The new law also changes break-in-service rules for defined contribution plans (those providing benefits based on the amount contributed to the participant's account) and defined benefit retirement plans funded solely by insurance contracts. Under prior law, if a participant in one of these plans experienced a 1-year break in service, his or her post years of service did not have to be taken into account in determining the vested percentage in prebreak employer-derived benefits, whether or not he or she had any vested rights under the plan.[20] The prebreak years were used only in determining the vested percentage in postbreak employer-derived accrued benefits. Under REA, if a participant who is not 100 percent vested incurs a break in service of fewer than 5 years and subsequently returns to service, all service after becoming re-employed must be added to the prebreak service in determining the vested portion of the participant's prebreak benefit derived from employer contributions.

Service Credit for Maternity and Paternity Leave

Under prior law, qualified retirement plans had to credit workers on maternity or paternity leave with up to 501 hours of service when the employee was being paid during that leave.[21] Consequently, only these employees could prevent a break in service while on maternity or paternity leave. Under REA, for purposes of determining whether a break in service has occurred,

[17] See Employee Benefit Research Institute, **Impact of Retirement Equity Act** (EBRI Issue Brief No. 39), February 1985.

[18] ERISA section 203(b)(3)(A) and IRC section 411(a)(6)(A). A year of service is generally defined in terms of a 1-year period during which the employee works 1,000 hours or more. Alternatively, the elapsed time approach, as described in Department of Labor Regulations, section 2530.200b-3(d)(e) or (f), could be used.

[19] IRC sections 410(a)(5)(D) and 411(a)(6)(B) and ERISA sections 202(b)(4) and 203(b)(2)(D).

[20] ERISA section 203(b)(3)(C) and IRC section 411(a)(6)(C).

[21] Department of Labor Regulations, section 2530.200b-2(a)(2).

workers who are absent for maternity or paternity leave will be deemed to have completed up to 501 hours of service, whether or not they are paid during this absence and whether or not the leave is approved. Employees can qualify for this credit if they are out of work for pregnancy, the birth of a child, the adoption of a child (but not foster care), or childcare during the period immediately following birth or adoption.

Workers will get credit for the number of hours they would normally have worked had they not been absent, or, if the number is unknown, 8 hours for each normal workday during the period of absence up to a maximum of 501 hours. The credit will apply in the year the absence begins only if needed to prevent a break in service for that year. Otherwise, the hours will be applied in the following year, up to the number needed to prevent a break in service. Coupled with the liberalized rules requiring 5 consecutive break-in-service years before previous service can be ignored, this new treatment of maternity and paternity leave will permit parents to stay home without losing service credits until a child is old enough to go to school.

REA provides that these credit hours count only in determining how the pension plan must treat service before or after a break in service for vesting and participation purposes. The maternity or paternity credits need not be used in calculating benefit accruals.

As a condition of providing the credit, employers may require workers to certify that the leave was taken for one of the permitted purposes. Workers may also be required to supply information regarding their normal working hours, if needed.

New Survivor Benefits for Spouses

Under ERISA, protection for spouses of participants in qualified defined benefit and defined contribution plans is afforded in the form of both a postretirement and preretirement benefit. REA makes significant changes in ERISA's provisions for survivor benefits for spouses. These changes were designed primarily to improve pension protection for surviving spouses of present and former employees with any vested benefit. The changes require pension plans to offer survivor benefits in many situations where none previously had been mandatory.

Postretirement spouse benefit. Under prior law, a qualified retirement plan that provided for the payment of benefits in the form of a life annuity had to provide for the payment of benefits in the form of a "qualified joint and survivor annuity" unless the participant elected not to receive such a benefit.[22] ERISA defines a qualified joint and survivor annuity as an annuity payable for the life of the participant with a survivor annuity for the life of the participant's spouse that is at least 50 percent and not more than 100 percent of the annuity payable during the joint lives of the participant and spouse and which is at least the actuarial equivalent of a single life annuity for the life of the participant.[23] This postretirement spouse's benefit was payable in the event of the participant's death after retirement as well as in active service after the attainment of normal retirement age. For qualified retirement plans, the normal retirement age is the earlier of: (1) the age specified by the plan, or (2) the later of (a) the time the plan participant attains age 65 or (b) the tenth anniversary of the date the participant commences participation in the plan.[24]

As under prior law, REA continues to require pension plans to provide the qualified joint and survivor annuity. If an election to waive the postretirement survivor benefit is to be made, however, REA requires *both* the participant and the spouse to sign a waiver form. The spouse's signature must be either witnessed by a plan representative or notarized.

Employers must provide a period of at least 90 days ending on the annuity starting date to waive the spouse coverage. The decision to waive this coverage may also be revoked during the election period. Employers generally have to notify their employees of this option. The notice must be a written explanation to each participant that states:

- the terms and conditions of the qualified joint and survivor annuity,
- the right of the participant to waive the survivor annuity and the effect of that election,
- the right of the participant's spouse to refuse to consent to a waiver of a survivor annuity, and
- the right to revoke the election and the effect of revocation.

The employer (plan sponsor) need not pay for the additional cost of these benefits; costs can be passed on to participants through actuarial reductions or other ways to be determined by the Treasury Department. However, if the employer pays for the full cost of a postretirement qualified joint and survivor annuity, the plan sponsor does not have to give participants the right to waive it.

Preretirement spouse benefit. Under prior law, if a qualified retirement plan provided for the payment of benefits before normal retirement age in the form of a life annuity, each participant was permitted to elect to have a benefit in the form of a life annuity payable to the participant's spouse in the event that the participant dies in active service and could have retired with an immediate pension (after attaining the earliest retirement age but before attaining the normal retirement age). This survivor benefit was not required to be paid,

[22] ERISA section 205 and IRC section 401(a)(11).

[23] ERISA section 205(g)(3) and IRC section 401(a)(11)(G)(iii).

[24] ERISA section 3(24) and IRC section 411(a)(8).

however, without an affirmative election by the participant.

Generally, the new law requires all qualified pension plans to automatically provide the preretirement survivor annuity beginning when the employee would have been eligible to receive retirement benefits.[25] Although a plan may permit benefits to start earlier, the benefit payments may not be delayed without the spouse's consent beyond the month in which the participant would have reached the earliest retirement age. A spouse who wishes a later starting date may elect to delay commencement of benefits up to the participant's normal retirement date.

REA provides that the consent of a participant's spouse is required for an election to decline both the qualified joint and survivor annuity and qualified preretirement survivor annuity. The applicable election period for the qualified preretirement survivor annuity begins on the first day of the plan year in which the participant attains age 35 and ends on the participant's date of death. A participant must be provided with a notice of his or her right to decline a qualified preretirement survivor annuity during the 3-year period preceding the election period.

As with the postretirement benefit, the cost of the preretirement survivor annuity may be assumed by the employer or passed on to covered participants—either through increased employer costs or reduced benefits for married participants. If the cost is assumed by the employer, the employer does not have to provide for employee elections.

The new law specifies the minimum benefit amounts to be paid under a qualified preretirement survivor annuity. These amounts are calculated differently depending on whether the plan is a defined benefit or defined contribution plan.

For defined benefit plans, the preretirement survivor annuity paid to the spouse of a participant who dies after reaching the earliest retirement age under the plan must not be less than the actuarial equivalent of the amount payable to a survivor under a qualified joint and survivor annuity if the participant had retired a day before death. Surviving spouses of participants who die on or before they attain the earliest retirement age under the plan must get at least as much as the plan would have paid had the participant separated from service on the date of death, survived to the earliest retirement age, retired at that time with a joint and survivor benefit, then died the next day.

For defined contribution plans, the preretirement survivor annuity must be actuarially equivalent to at least 50 percent of the participant's entire account balance as of the date of death.

Under the new law, both the postretirement spouse benefit (joint and survivor annuity) and preretirement spouse benefit will be automatically provided for vested workers with at least an hour of service or paid leave after August 23, 1984, unless both spouses agree to waive those benefits within specified election periods. This provision took effect on January 1, 1985.

Former employees. Under REA, plans are required to offer survivor benefits to living former employees with deferred vested benefits who had not started receiving benefits before August 23, 1984. The two categories of vested workers who will gain additional survivor protection are (1) those who have 10 years of service with at least an hour of service under the plan that took place after December 31, 1975, and (2) those who completed at least an hour of service after ERISA was enacted on September 1, 1974, and separated from service before January 1, 1976. Persons in the first category may now elect a preretirement survivor annuity. Those in the second category may elect a joint and survivor annuity. Either of the elections may be made by a former employee anytime between August 23, 1984, and the earlier of the annuity starting date or the date of the participant's death.

One-year marriage rule. Under prior law, to be eligible to elect a pre- or post-retirement survivor annuity a participant had to be married for a 1-year period ending on the annuity starting date.[26] REA allows a plan to require that a participant be married at least 1 year before the earlier of the date of death or the starting date of the annuity for the new survivor benefit rules to apply. However, for a participant who marries within 1 year before the annuity starting date and has been married to that spouse for at least 1 year ending on the date of the participant's death, the participant and spouse will be treated as having been married throughout the 1-year period ending on the participant's annuity starting date. In the absence of a contrary order in a qualified domestic relations decree, the spouse to whom the participant was married for 1 year before the annuity starting date is entitled to the survivor annuity even if the spouse and participant are no longer married when the participant dies.

Repeal of the 2-year nonaccidental rule. The new law repeals ERISA's 2-year nonaccidental death rule.[27] Thus, a qualified retirement plan can no longer provide that an election or revocation of a joint and survivor annuity is not effective because the participant died within 2 years of making the election or revocation and the death was not due to an accident.

[25] REA makes an exception to the rule for money purchase plans adopted as part of an employee stock option plan, and profit sharing and stock bonus plans, if: (a) the plan provides that the vested account balance will be paid to the surviving spouse; (b) the participant does not elect payments in the form of a life annuity; and (c) the plan is not a transferee of a plan required to provide automatic survivor benefits. IRC section 401(a)(11)(B) as amended by section 203(a) of REA.

[26] ERISA section 205(d) and IRC section 401(a)(11)(D).

[27] ERISA section 205(f) and IRC section 401(a)(11)(F).

Qualified Domestic Relations Orders

Under ERISA, benefits paid by qualified retirement plans are subject to prohibitions against assignment or alienation.[28] These rules precluding the transferring of plan benefits are often referred to as spendthrift provisions. ERISA also contains express provisions superseding or preempting State laws regarding pension plans.[29] As a result, a pension plan that does not include the required spendthrift provisions is not qualified under the IRC, and State laws permitting an assignment or transfer of benefits are generally preempted by ERISA.

Recently, courts have disagreed[30] over whether ERISA's preemption and spendthrift provisions were intended to prevent the application of State domestic relations laws permitting the division of vested pension benefits for the purpose of meeting family support obligations (for example, alimony, separate maintenance, and child support obligations). Before REA was enacted, the Internal Revenue Service (IRS) had ruled that the spendthrift provisions were not violated when a plan trustee complied with a court order requiring the distribution of benefits of a participant in pay status to the participant's spouse or children to meet the participant's alimony or child support obligation.[31] The IRS had taken no position when the participant's benefits were not in pay status.

The new legislation clarifies ERISA's spendthrift provisions by providing new rules for the treatment of certain domestic relations orders. In addition, REA creates an exception to the ERISA preemption provision with respect to these orders.

REA provides that distributions ordered under a "qualified domestic relation order" will not be subject to the spendthrift provisions of ERISA and that the plan must pay for them. A domestic relations order is any judgment, decree, or order (including the approval of property settlement agreements) that relates to child support, alimony payments, or marital property rights of a spouse or child of the participant made pursuant to State domestic relations law.

To be qualified, the order must list the amount or percentage of benefits payable to the spouse and/or child payee, or the manner in which this amount is to be determined, and the number of payments or the period for which the payments are required. The order will not be a qualified order if it requires the plan to provide any type of payment or form of benefit or option not otherwise provided under the plan, requires the plan to increase benefits, or requires payment to someone when such payments are already required to be paid to someone else under a previously existing qualified domestic relations order.

The order may require payments to begin to a spouse or dependent only after the date on which the participant attains the earliest retirement age. The value of the payee's benefits need not take into account the value of any employer subsidy for early retirement.

The plan administrator must establish reasonable procedures in writing for determining the qualified status of domestic-relations orders and for administering payments under these orders. The participant and those individuals entitled to benefits must be promptly notified of receipt of the order and the plan's procedures for dealing with it. While the determination is being made as to whether the order is qualified, the plan administrator must segregate, either in a separate account in the plan or in an escrow account, the amounts that would be payable if the order is truly payable.

Expanded Protection of Benefit Accruals

ERISA requires that a participant in a defined benefit pension plan accrue or earn the normal retirement benefit provided by the plan at certain minimum rates.[32] These accrual rules are designed to limit backloading of benefit accruals. Under a backloaded accrual schedule, a larger portion of the benefit is earned each year 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.

ERISA also provides that a qualified retirement plan generally may not be amended in a manner that decreases the benefits of any participant accrued prior to the amendment.[33] Before REA was enacted, uncertainty existed over whether this anti-cutback rule prohibited the elimination of plan subsidies or options that indirectly affect the accrued benefits.

REA clarifies and expands the anti-cutback rule by treating a plan amendment as reducing accrued benefits when the amendment has the effect of either eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit.

"Retirement-type subsidies" will be defined by Treasury regulations but the Senate Finance Committee report on REA indicates that they are not intended to include disability or medical supplements, death bene-

[28] ERISA section 206(d)(1) and IRC section 401(a)(13).

[29] ERISA section 514.

[30] See, for example, **Stone** v. **Stone**, 633 F2d 740 (9th Cir. 1980), wherein 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 attachments of plan benefits for family support purposes.

[31] Rev. Rul. 80-27 (1980) 1 C.B. 8.

[32] ERISA section 204(b)(1) and IRC section 411(b)(1).

[33] ERISA section 204(g) and IRC section 411(d)(6).

fits, or plant shutdown benefits. The report also indicated that a subsidy that continues after retirement age would be considered a retirement-type subsidy. Rights to the so-called window benefits, which provide special subsidies only to employees who retire within a specified window period of time, would not be retained by those who do not retire during that period.

REA also prohibits plans from retroactively eliminating benefit options or subsidized benefits that represent a valuable right for the worker or beneficiary, unless a similar benefit with a comparable subsidy is offered or there is an exception in the regulations to be issued by the Treasury. For example, eliminating an option under a plan for taking a lump sum benefit as opposed to a life annuity would not be permissible because it is valuable to a person with a short life expectancy.

This section of REA applies to amendments made after July 30, 1984. However, the new anti-cutback rules will not apply to amendments adopted before April 1, 1985, for situations involving collective bargaining agreements expiring in the last 5 months of 1984, if new agreements were initiated in 1984.

Restrictions on Mandatory Cash-Outs of Annuities

The new law increases the dollar limit for qualified retirement plans that provide for the cash-out or payment of benefits in a lump sum without the consent of the participant. Under the new law, a participant may not be required to take a lump sum cash payment in excess of $3,500 (up from $1,750) in cancellation of his or her rights under the plan.

Notice of Forfeiture of Benefits

Under prior law, a pension plan administrator was required on an annual basis to furnish the participant with a statement indicating the participant's total accrued benefit and nonforfeitable accrued benefit, if the participant requested such a statement.[34] In addition, the plan administrator was to give the statement to a plan participant who separated from service, was entitled to vested benefits under the plan, and did not receive benefits from the plan during the year.

REA adds to these notice requirements by providing that plan administrators must also notify the participant of benefits that are forfeitable if the participant dies before a particular date.

Notice of Rollover Treatment

Under present law, taxes are deferred on certain pension plan distributions if the distributions are rolled over within 60 days after receipt to another qualified plan or an Individual Retirement Account.[35] Under prior law, plans were not required to notify participants of their right to make a rollover.

Under REA, plan administrators must give a written explanation of how certain plan distributions can qualify for rollover treatment and how they will be treated for tax purposes. If applicable, the explanation must also include a description of capital gains treatment and other tax rules that apply to lump sum distributions. REA imposes penalties of up to $5,000 for each calendar year during which the plan administrator fails to provide the required notice.

Study by the General Accounting Office

REA requires the General Accounting Office to issue a report on the effect of the pension rules on women by January 1, 1990.

[34] ERISA section 105 and IRC section 6057.

[35] IRC sections 402(a)(5) and 408(d)(3).