

DIVORCE FINANCIAL SOLUTIONS, LLC

Divorce Financial Counselors and Divorce Financial Analysts
2229 South Kinnickinnic Avenue
Milwaukee, WI 53207

GARRICK G. ZIELINSKI, CFP, CDFA
THOMAS M. KARTHAUSSER

Telephone: (414) 294-4755
Toll-Free: 1-888-337-7002
Fax: (414) 294-4789
www.divfinsolutions.com

The Pension Protection Act of 2006

President Bush signed H.R. 4, the “Pension Protection Act of 2006 (PPA), the most sweeping reform of the United States’ pension laws in over 30 years. The Act itself is a voluminous 907-page document designed to strengthen the federal pension insurance system and PBGC, and expands opportunities for individuals and employers to offer more ways to build retirement nest eggs. Here’s a brief rundown of the legislation:

- Requires companies that under-fund their pension plans to pay additional PBGC premiums
- Extends a requirement that companies that terminate their pensions provide extra funding for the pension insurance system
- Requires that companies measure the obligations of their pension plans more accurately
- Closes loopholes that allow under-funded plans to skip pension payments
- Raises caps on the amount that employers can put into their pension plans, so they can add more money during good times and build a cushion that can keep their pensions solvent in lean times
- Prevents companies with under-funded pension plans from digging the hole deeper by promising extra benefits to their workers without paying for those promises up front

The PPA also contains provisions to help individuals:

- Removes barriers that prevent companies from automatically enrolling their employees in defined contribution plans
- Ensures that workers have more information about the performance of their accounts
- Provides greater access to professional advice about investing for retirement
- Gives workers greater control over how their accounts are invested
- Makes permanent the higher contribution limits for IRA’s and 401(k)’s that were passed in 2001, enabling more workers to build larger retirement accounts

There are changes that affect survivor benefit options in defined benefit plans that may have some interesting issues that would affect the negotiation of survivor benefits in the context of drafting qualified domestic relations orders (QDRO).

- The PPA adds a provision that revises the minimum survivor annuity requirements to require plans to provide an additional survivor annuity benefit paid in the form of a “qualified optional survivor annuity.”

- A qualified optional survivor annuity is one that must provide an option to elect a joint and survivor annuity to pay 75% of the amount payable over the joint lives of the participant and the spouse
- Such provision must be allowed as an option and will of course require a greater actuarial equivalent reduction

There are numerous changes that affect the time and order of the issuance of domestic relations orders (DRO) by companies.

- The Secretary of Labor is directed to issue regulations to clarify the status of certain domestic relations orders.
- In particular, the regulations are to clarify that DRO's that otherwise meet the QDRO requirements will not fail to be treated as a QDRO solely because of the time it is issued or because it is issued after or revises another domestic relations order or QDRO.

We'll keep you posted in regard to the Secretary's clarifying regulations. It will be interesting to see if the regulations also address the status of a DRO and/or QDRO if the participant predeceases the issuance of a QDRO or the payment of a benefit incident to a QDRO if the participant has deceased and the DRO is subsequent to his/her death. Hopefully, the regulations will also define "a reasonable amount of time" in regard to how long a company may take to review and/or qualify a DRO.

Section 1003 of the PPA also made some changes to Section 5 of the Railroad Retirement Act of 1974. The Railroad Retirement System (RRS) has two main components. Tier I of the system replicates the Social Security system and is financed by taxes on employers and employees. Tier I provides employees and their qualified spouses, dependants widow or widowers with benefits that are roughly equal to Social Security. RRS workers pay the Tier I tax instead of paying into the Social Security system. Tier II of the system replicates a private pension plan, with employers and employees making contributions to the system to finance the retirement benefits.

Generally, a former spouse of a railroad employee is eligible to receive survivor's benefits under Tier I of the RRS and under the same terms and conditions as the Social Security system. However, a former spouse would lose eligibility for benefits payable under Tier II upon the employee's death. Under Tier II, if benefits never commenced, they would not be payable to a former spouse. If benefits have commenced, they ceased upon the employee's death. The PPA contains provisions that:

- Eliminates the requirement that a railroad employee actually receive railroad retirement benefits in order for the former spouse to be entitled to any Tier I and Tier II benefits awarded under a state court order
- Provides for a provision that the former spouse of a railroad employee does not lose entitlement for otherwise allowable Tier II benefits upon the death of the railroad employee

The effective date of this provision is August 17, 2007 and it is retroactive. If you submit or have submitted previous Railroad Retirement Orders and those orders do not contain specific language, which purports to say that the former spouse is not entitled to survivor benefits, the RRS will automatically apply the new provisions to your order and implement the survivor benefit. There is no reduction to the participant annuity for this change. Thus, if you have old RRS orders and those orders specifically deny survivor benefits, you may want to consider going through your archive and amending the old orders to comply with the new rules.

Thus, effective November 17, 2007, and for those participant deaths that occur after this date, it is possible to secure RRS benefits to a former spouse even in the event of the participants death before and/or after retirement. That is major change of events and certainly provides a measure of relief to surviving spouses and former spouses that was not captured under the old rules.