The Retirement Equity Act was signed by the President on August 23, 1984. As a result, pension, profit-sharing and stock bonus plans will face a new set of rules, intended primarily to achieve pension equity for women. Plan sponsors will have to comply with the new legislation for plan years beginning after December 31, 1984, although later effective dates are provided for collectively bargained plans. However, certain of the joint-and-survivor benefit requirements are effective on August 23, 1984.

The principal changes brought about by the Retirement Equity Act are summarized below.

Participation and Vesting Changes

Recognizing that many women work a major portion of their career during their twenties, Congress has reduced the highest age a plan can use for pension participation from age 25 to age 21. In addition to requiring benefit accruals at an earlier age, this will increase the plan sponsor's total premium for Pension Benefit Guaranty Corporation termination insurance, because the premium is calculated on a per capita basis. Plans can continue to require one year of service as a condition of participation. Service performed after the worker's eighteenth birthday will have to be counted for vesting purposes, compared to service after age 22 currently.

Break in Service Rules

Workers who quit and later return to the same employer will not lose credit for the earlier service unless the consecutive 1-year breaks in service total at least 5 years, or, if greater, the aggregate years of service before the break. This applies to nonvested participants; service of workers with any vested benefit is already protected under current law. Employers must begin keeping records of terminated employees for at least five years so that any re-hires can be properly credited with their earlier service.

Maternity and Paternity Leave

New rules will also protect the benefits of persons absent from work because of pregnancy, birth, adoption, or the care of the child immediately after birth or adoption placement. During such an absence, the individual will be treated as having completed the number of hours that

would normally have been credited for that period (or, if unknown, eight hours per workday), up to a total of 501 hours--enough to prevent a break in service for that year. The hours will be credited either in the year the absence begins if a break in service would otherwise occur, or in the following year. These hours will be taken into account for participation and vesting purposes, but not for benefit accrual.

Survivor Benefits

The new law will require that pension plans (including most defined contribution plans) and profit-sharing or stock bonus plans automatically provide benefits in the form of a joint-and-survivor annuity. Exceptions are made for profit-sharing plans and stock bonus plans and money purchase plans established as part of an ESOP. Any of these types of plans is exempt from the new requirements only if (1) the plan pays the surviving spouse the entire account balance on the death of the worker, (2) under a plan that offers a life annuity, the participant elects another form of benefit payment, and (3) the plan is not a transferee of a plan required to provide automatic survivor benefits. A participant can waive the joint-and-survivor annuity, but only if the spouse agrees in writing. Employers must set up procedures for handling these agreements, which must either be witnessed by a plan representative or notarized.

Preretirement survivor benefits, which until now have been mandatory only for workers within ten years of normal retirement or eligible to retire, will be required for workers with any vested benefits. Like the joint-and-survivor annuity, this protection can only be waived with the written consent of the spouse. Plans can delay payment of a preretirement survivor benefit only until the worker would have reached the earliest retirement age under the plan, unless the surviving spouse wants payments to begin after that. Plans need not subsidize the costs of providing the preretirement survivor benefit. These costs may be passed on to the plan participants through actuarial reductions.

The joint-and-survivor provisions take effect for plan years beginning after December 31, 1984 (or later for collectively bargained plans). However, the spousal consent requirements go into effect for elections or revocations made on or after January 1, 1985, even if the plan year begins later. The survivor of any vested participant with an hour of service after August 23, 1984 (the enactment date) who dies this year must be paid a preretirement survivor annuity.

Some workers who have terminated employment but who have not yet begun receiving benefits will be granted joint-and-survivor rights and preretirement survivor annuities under a complicated set of transition rules. For example, a person with deferred vested benefits and at least ten years of service who worked at least one hour between the beginning of the first plan year after December 31, 1975 and the date of enactment, may elect a preretirement survivor annuity. But unlike current employees, such a person will not have this benefit automatically. Plans will be required to notify participants of their rights under these transition rules.

Domestic Relations Orders

Congress has made it clear that pension plans can obey qualified domestic relations orders regarding the distribution of plan benefits in cases such as divorce without violating ERISA's spendthrift provisions. The order must meet certain requirements, however: It must specify the amount or percentage of the benefits to be paid to an alternate payee (such as a former spouse or a child) or how such an amount is to be determined as well as the number of payments or the period over which the benefits are to be paid. A qualified order cannot require a plan to pay benefits in a form not otherwise available under the plan, nor can it require the plan to pay increased benefits.

An alternate payee can begin receiving payments from the plan, if a court so orders, on or after the worker's earliest retirement date even if the participant is still employed. When payments begin before the worker retires, the alternate payee's benefits will be based on the worker's accrued normal retirement benefit, reduced as for early retirement, not taking into account any employer subsidy for early retirement. The order may specify, though, that when the worker subsequently retires, the alternate payee will receive a share of any subsidized benefit the participant is entitled to. Exceptions to tax rules (those governing 401(k) plans, for example) are included to permit plans to obey an order even though the worker has not terminated employment.

The domestic relations provisions apply beginning on January 1, 1985. Plans must treat domestic relations orders received before the date of enactment as qualified orders to the extent payments are being made, and may treat any other orders entered before 1985 as qualified.

Cash Out of Accrued Benefits

The size of a benefit that a plan can pay out without the participant's consent in the case of a worker who terminates employment has been raised from $1,750 to $3,500. Similarly, if the value of a joint-and-survivor annuity or preretirement survivor benefit does not exceed $3,500, the plan can distribute the full amount upon the death of the participant without consent. In all these cases, the plan cannot use interest rates greater than the PBGC lump-sum rate to calculate the value of the benefit to be distributed.

Notice Requirements

Administrators will be required to notify participants of several additional items: Benefit statements will have to include a notice that certain benefits may be forfeited if a participant dies before a particular date. Also, recipients of rollover distributions must be given notice that the distribution will not be taxed currently to the extent it is transferred within 60 days to another pension plan or an IRA. At specified times, plans must notify workers of their rights to waive joint-and-survivor annuities and preretirement survivor benefits.

Reduction of Accrued Benefits

Plan amendments reducing early retirement benefits or "retirement-type subsidies" will be treated as prohibited reductions in accrued benefits,

unless they apply to future benefit accruals only. The Senate Finance Committee report accompanying the legislation indicates that disability, medical, and death benefits as well as social security supplements and plant shutdown benefits are not to be considered retirement-type subsidies. According to the committee report, early retirement subsidies provided only during a temporary period or "window" will not be affected by this legislation, as many had feared.