

Employee Plans CPE Technical Topics for 1999

INVOLUNTARY DISTRIBUTIONS, \$5,000 CASH OUT REGULATIONS

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CONTENTS

OUTLINE

- I. Introduction
- II. New Regulations
- III. The ALook Back Rule@
- IV. Application of New Cashout Rule for Service Crediting for Accruals
- V. Plan Amendments

PUBLISHED GUIDANCE

T.D. 8794 Increase in Cash-Out Limit under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

[TD 8796] Notice, Consent and Election Requirements of Sections 411(a)(11) and 417 for Qualified Retirement Plans

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

[Treasury Decision 8768] Final and temporary regulations under Section 417(e)

Employee Plans CPE Technical Topics for 1999

I. Introduction

Section 411(a)(11) of the Code requires the consent of the employee for distributions with a present value in excess of \$3,500.

Section 417(e)(1) of the Code provides that if the present value of a J&S or QPSA is less than the limit of section 411(a)(11), the present value can be paid without consent. This rule applies before the annuity starting date.

TRA-97 increased the \$3,500 limit to \$5,000. This amount is not indexed for inflation.

Section 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(ii) of the regulations stated that if the present value of a participant's accrued benefit at the time of any distribution exceed \$3,500, then the present value at the time of any later distribution **is deemed to exceed** \$3,500.

Thus, once an employee's consent was required for a distribution, that consent was always required. This is the ALook back rule for cashouts.

TRA-97 increased the \$3,500 to \$5,000 effective August 5, 1997.

II. New Regulations

- a. On December 24, 1998, final and temporary regulations under the TRA-97 changes to the \$5,000 cash out rule were published. The increased limit can be added to plans retroactively without violating section 411(d)(6).
- b. Exception: Under final and temporary regulations, if a distribution has begun under an annuity option of a benefit that exceeded \$5,000 at the time a distribution began, **and** the value of the benefit is currently less than \$5,000, a plan administrator cannot make an involuntary distribution to a participant.
- c. Proposed regulations partially repeal the ALook back Rule.

III. The ALook Back Rule

Section 417(e)(1) prohibits distributions without consent after the annuity starting date (see above). Section 417(f)(2) defines annuity starting date as:

Employee Plans CPE Technical Topics for 1999

- a. the first day an amount is payable as an annuity, or
- b. If a benefit is not payable as annuity, the 1st day a participant is entitled to the benefit.

IV. Application of New Cashout Rule for Service Crediting for Accruals

For determining service credit, a cashout under section 411(a)(7)(B)(i) of the Code must be on account of termination of participation in the plan. New regulations state that a \$5,000 distribution will be treated as having been made on account of termination of participation if the only reason it wasn't made when the participant quit the plan was the \$3,500 limit. See section 1.411(a)-7(T) effective for distributions on or after March 22, 1999 and before December 18, 2001, the employer can apply the new section to plan years beginning on or after August 6, 1997.

EXAMPLE 1: The Floofy World Enterprises Defined Benefit Pension Trust provided for a cash out of benefits with a present value not in excess of \$3,500. On August 8, 1998, Employee Fuzzy quit the plan (the plan is a calendar year plan). Fuzzy's accrued benefit at the time was \$3,800. On March 22, 1999, (his pet's 54th birthday) the Floofy plan is amended to apply the \$5,000 limit effective January 1, 1998. Soonee, the plan trustee now writes a check to Fuzzy for the current present value of his accrued benefit (which is less than \$5,000). Fuzzy must take the distribution.

V. Plan Amendments

A plan amendment is required to implement these new regulations but failure to amend is not a disqualifying defect as no plan is required to have cashouts. A plan may be retroactively amended to increase the cashout limit to \$5,000 (Rev.Proc. 98-14, 1998-4 I.R.B. 22, section 4.03) as long as it operated in anticipation of the amendment during the remedial amendment period. The Look Back Rule cannot be removed retroactively. T.D. 8794

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts and 31

Increase in Cash-Out Limit under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

Employee Plans CPE Technical Topics for 1999

Release Date: December 18, 1998

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the increase from \$ 3,500 to \$ 5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate, for most distributions, the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions.

The final and temporary regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The final regulations also amend the existing final regulations to cross- reference the temporary regulations. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the Federal Register.

DATES: Effective Date: These regulations are effective December 21, 1998.

Applicability Date: These final and temporary regulations generally apply to distributions made on or after March 22, 1999. However, employers are permitted to apply the final regulations and the temporary regulations other than section 1.411(a)-11T(c)(3)(i) to plan years beginning on or after August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Karlan, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) under sections 411(a)(7), 411(a)(11), and 417(e)(1) regarding restrictions on involuntary distributions and joint and survivor annuity requirements for qualified plans. The final and temporary

Employee Plans CPE Technical Topics for 1999

regulations change the existing regulations to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105-34, 111 Stat. 788 (1997).

Explanation of Provisions

A. Restrictions on Mandatory Distributions

Prior to the enactment of TRA '97, section 411(a)(11)(A) provided that if the present value of any nonforfeitable accrued benefit exceeded \$ 3,500, a plan met the requirements of section 411(a)(11) only if such plan provided that such benefit could not be immediately distributed without the consent of the participant. TRA '97 changed this cash-out limit to \$ 5,000, effective for plan years beginning after August 5, 1997. For this purpose, both before and after the enactment of TRA '97, the present value of a participant's nonforfeitable benefit is calculated in accordance with section 417(e)(3).

Interpreting the law prior to the enactment of TRA '97, section 1.411(a)-11(c)(3) provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$ 3,500. If the present value does not exceed \$ 3,500, the consent requirements are deemed satisfied, and the plan may distribute such portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$ 3,500, then the present value at any subsequent time is deemed to exceed \$ 3,500; this is commonly referred to as the "lookback rule."

Consistent with the TRA '97 change, these regulations increase the cash-out limit to \$ 5,000. In determining whether a participant's nonforfeitable accrued benefit may be distributed without consent during plan years beginning on or after August 6, 1997, the new cash-out limit of \$ 5,000 is permitted to be applied as though it were in effect for all plan years, including those beginning before August 6, 1997.

Thus, for example, a calendar year plan may be amended to provide for the involuntary distribution after December 31, 1997, of the accrued benefit of a participant who terminated employment on or before that date, if the present value of the accrued benefit does not exceed \$ 5,000 at the time of the distribution (subject to the exception described below for optional forms of benefit under which at least one scheduled periodic distribution is still payable). This result is the same even if the accrued benefit could only have been distributed with the participant's or the spouse's consent at termination of employment because the present value of the benefit exceeded \$ 3,500 at that time.

Employee Plans CPE Technical Topics for 1999

In addition, these temporary regulations eliminate, for many distributions, the lookback rule under section 1.411(a)-11(c)(3). Under these regulations, a plan may provide that the present value of a participant's nonforfeitable accrued benefit generally may be distributed without consent if that present value does not exceed the cash-out limit as determined at the time of the current distribution without regard to the present value of the participant's benefit at the time of an earlier distribution. However, under these temporary regulations, if a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable, and if the present value of the participant's nonforfeitable accrued benefit exceeded the \$ 5,000 cash-out limit at the time of the first distribution under that optional form of benefit, then the present value of the participant's nonforfeitable accrued benefit may not be distributed without consent.

B. Immediate Distribution of the Present Value of a QJSA or QPSA

Prior to the enactment of TRA '97, section 417(e)(1) provided that a plan subject to sections 401(a)(11) and 417 could provide that the present value of a qualified joint and survivor annuity ("QJSA") or a qualified preretirement survivor annuity ("QPSA") would be immediately distributed if such value did not exceed \$ 3,500. Pursuant to section 417(e)(1), no distribution could be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant had died, the surviving spouse) consented in writing to such distribution. TRA '97 changed this dollar limit from \$ 3,500 to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These regulations change only the dollar limit in section 1.417(e)-1(b)(2)(i) from \$ 3,500 to the dollar limit under section 411(a)(11)(A), and do not revise the lookback rule set forth in that section for plans subject to sections 401(a)(11) and 417.

C. Proposed Regulations

The proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the Federal Register completely repeal the lookback rule under sections 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i), i.e., both for plans that are and plans that are not subject to sections 401(a)(11) and 417. In accordance with section 417(e)(1), the proposed regulations provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, this provision applies

Employee Plans CPE Technical Topics for 1999

only to that portion (and not to the portion with respect to which no distributions are being made).

D. Disregard of Certain Past Service

Section 411(a)(7)(B)(i) provides that, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount not more than \$ 3,500 (prior to the amendment of the cash-out limit under TRA '97), as permitted under regulations prescribed by the Secretary. Section 411(a)(7)(B)(i) applies only if the distribution was made on termination of the employee's participation in the plan, and section 1.411(a)-7(d)(4)(i)(C) provides that such involuntary distributions must have been made due to the termination of the employee's participation in the plan. TRA '97 changed this \$ 3,500 limit to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These temporary regulations provide that, for purposes of applying section 411(a)(7)(B)(i), an involuntary distribution of an employee's nonforfeitable accrued benefit the present value of which does not exceed \$ 5,000 may be treated as having occurred due to termination of participation if the distribution could have been made due to termination of participation but for the fact that the present value exceeded \$ 3,500 at that time.

E. Conforming Amendments

Several other provisions of the Treasury Regulations incorporate the cash-out limit, and these regulations make conforming amendments to those provisions in order to incorporate the new cash-out limit under section 411(a)(11). Specifically, conforming amendments are made to the following sections: sections 1.401(a)-20 Q&A-8(d); 1.401(a)-20 Q&A-24; 1.401(a)(4)-4(b)(2)(ii)(C); 1.401(a)(26)-4(d)(2); 1.401(a)(26)-6(c)(4); 1.411(a)-11(b); 1.411(a)-11(c)(7); 1.411(d)-4 Q&A-2(b)(2)(v); 1.411(d)-4 Q&A-4(a); 1.417(e)-1(b)(2)(i); and 31.3121(b)(7)-2(d)(2)(i).

F. Valuation Rules

Section 417(e)(3) prescribes rules and definitions for determining the present value of an accrued benefit under a defined benefit plan for purposes of sections 417 and 411(a)(11)(A). (In the case of a defined contribution plan, the present value of the accrued benefit is the value of the account balance.) The present value of a participant's accrued benefit for purposes of the cash-out limit is determined in accordance with section 417(e)(3) using the interest rate and mortality tables in effect under the plan for the annuity starting date. Thus, for example, if the present value of

Employee Plans CPE Technical Topics for 1999

the participant's accrued benefit using the rate described in section 417(e)(3)(B) (often referred to as the "PBGC rate") exceeds \$ 5,000, and the plan is subsequently amended to reflect the interest rate described in section 417(e)(3)(A)(ii), the plan may provide that the present value of the accrued benefit may be distributed without the participant's or spouse's consent if the value of the accrued benefit does not exceed \$ 5,000, as determined under the plan provisions then in effect.

G. Benefits Protected from Reduction or Elimination

Section 411(d)(6) provides, in general, that a plan shall be treated as not satisfying the requirements of section 401(a) if the accrued benefit of a participant is decreased, or an optional form of benefit is eliminated, by an amendment of the plan. Section 1.411(d)-4, paragraph (b)(2)(v) of Q&A-2 provides that a plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such distribution is permitted under sections 411(a)(11) and 417(e). In accordance with that provision, a plan may be amended for plan years beginning on or after August 6, 1997, to permit the involuntary distribution of an accrued benefit using a cash-out limit of \$ 5,000, with respect to benefits accrued before the amendment was adopted and effective. Such an amendment is permitted even if the plan, prior to amendment, did not permit involuntary distributions (as well as if the plan permitted involuntary distributions if the present value of the participant's benefit did not exceed the prior cash-out limit of \$ 3,500). Such an amendment will not violate the anti-cutback rules of section 411(d)(6).

H. Remedial Amendment Period

Rev. Proc. 98-14 (1998-4 I.R.B. 22) at section 4, provides the remedial amendment period for certain plan amendments made pursuant to TRA '97. A plan may be amended retroactively to implement the increase in the cash-out limit to \$ 5,000 in accordance with section 4 of the revenue procedure.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Employee Plans CPE Technical Topics for 1999

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for section 1.411(a)-7T and revising the entry for section 1.411(d)-4 to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.411(a)-7T also issued under 26 U.S.C. 411(a)(7)(B)(i).

Section 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(a)-7 is amended by adding a sentence at the end of the concluding text of paragraph (d)(4)(i) to read as follows:

Section 1.411(a)-7 Definitions and special rules.

* * * * *

(d) * * *

(4) Certain cash-outs of accrued benefits. (i) * * *

* * * * *

* * * (For distributions made on or after March 22, 1999, see section 1.411(a)-7T.)

* * * * *

Par. 3. Section 1.411(a)-7T is added to read as follows:

Employee Plans CPE Technical Topics for 1999

Section 1.411(a)-7T Definitions and special rules (temporary).

(a) through (d)(3) [Reserved]. For further guidance, see section 1.411(a)-7(a) through (d)(3).

(d)(4) Certain cash-outs of accrued benefits--(i) Involuntary cash-outs. For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which--

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of section 1.411(a)-7(d)(4)(iv) in effect at the time of the distribution.

(d)(4)(ii) through (v) [Reserved]. For further guidance, see section 1.411(a)-7(d)(4)(ii) through (v).

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in section 1.411(a)-7(d)(2)(i).

(vii) Effective date. Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999, through December 18, 2001. For plan years beginning before March 22, 1999, see section 1.411(a)-7(d)(4)(i). However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or after August 6, 1997.

Employee Plans CPE Technical Topics for 1999

(d)(5) and (6) [Reserved]. For further guidance, see section 1.411(a)-7(d)(5) and (6).

Par. 4. Section 1.411(a)-11 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

Section 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) \$ 3,500. * * * (For distributions made on or after March 22, 1999, see section 1.411(a)-11T.)

* * * * *

Par. 5. Section 1.411(a)-11T is added to read as follows:

Section 1.411(a)-11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]. For further guidance, see section 1.411(a)-11(a) and (b).

(c) Consent, etc. requirements--(1) General rule. [Reserved]. For further guidance, see section 1.411(a)-11(c)(1).

(2) Consent. [Reserved]. For further guidance, see section 1.411(a)-11(c)(2).

(3) Cash-out limit. (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see section 1.417(e)-1(d). If a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution has not yet been made, and if the present value of the participant's nonforfeitable accrued benefit, determined at the time of the first distribution under that optional form of benefit, exceeded the cash-out limit currently in effect under paragraph

Employee Plans CPE Technical Topics for 1999

(c)(3)(ii) of this section, then the present value of the participant's nonforfeitable accrued benefit is deemed to continue to exceed the cash-out limit.

Thus, for example, if the present value of a participant's accrued benefit does not exceed the cash-out limit on the date of a distribution after termination of employment but did, at the time of an earlier in-service hardship withdrawal, exceed the cash-out limit in effect on the date of the post-termination distribution, the plan is permitted to distribute the present value of the participant's accrued benefit on the date of the post-termination distribution without the participant's consent. However, if a participant began to receive scheduled installment payments under a plan and, at that time, the participant's accrued benefit exceeded the cash-out limit currently in effect, the present value of the participant's accrued benefit is deemed to continue to exceed the cash-out limit and may not be distributed without the participant's consent.

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is \$ 5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is \$ 3,500.

(iii) Effective date. Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after March 22, 1999, through December 18, 2001. For plan years beginning before March 22, 1999, see section 1.411(a)-11(c)(3). However, an employer is permitted to apply paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997.

(c)(4) through (e) [Reserved]. For further guidance, see section 1.411(a)-11(c)(4) through (e).

PARTS 1 AND 31--[AMENDED]

Par. 6. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)-20, Q&A-8, paragraph (d), first sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)

Employee Plans CPE Technical Topics for 1999

1.401(a)-20, Q&A-24, paragraph (a)(1), fourth sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.401(a)(4)-4, paragraph (b)(2)(ii)(C)	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.401(a)(26)-4, paragraph (d)(2), last sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.401(a)(26)-6, paragraph (c)(4), first sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.411(a)-11, paragraph (b), first sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.411(a)-11, paragraph (c)(7), third sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second, third, and fourth sentences	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
	Remove	Add
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second sentence	\$ 1,750	\$ 3,500,
1.411(d)-4, Q&A-4, paragraph (a), eighth sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
1.411(d)-4, Q&A-4,	1.401(a)-4	1.401(a)(4)-4(b)(2)(ii)(C)

Employee Plans CPE Technical Topics for 1999

paragraph (a), last sentence in the parenthetical 1.417(e)-1, paragraph (b)(2)(i), first, fourth, and fifth sentences	Q&A-4 \$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii)
31.3121(b)(7)-2, paragraph (d)(2)(i), last sentence	\$ 3,500	the cash-out limit in effect under section 1.411(a)-11T(c)(3)(ii) of this chapter

/s/ David A. Mader , Acting Deputy Commissioner of Internal Revenue, Approved:
November 18, 1998, /s/ Donald C. Lubick Assistant Secretary of the Treasury

FEDERAL REGISTER

Vol. 63, No. 243

Rules and Regulations

DEPARTMENT OF THE TREASURY
Internal Revenue Service (IRS)

26 CFR Parts 1 and 602

[TD 8796]
RIN 1545-AU05

Notice, Consent and Election Requirements of Sections 411(a)(11) and 417 for
Qualified Retirement Plans

63 FR 70009

DATE: Friday, December 18, 1998

ACTION: Final regulations.

SUMMARY: This document contains regulations that provide guidance concerning
the notice and consent requirements under section 411(a)(11) and the notice and
election requirements under section 417 for qualified retirement plans. These

Employee Plans CPE Technical Topics for 1999

regulations finalize proposed regulations published in the Federal Register on September 22, 1995. In order to avoid delay in the commencement of distributions, the regulations generally allow distributions to commence, with spousal consent if required, in less than 30 days after a participant receives a notice of distribution rights if the participant affirmatively so elects to have the distributions commence. The regulations affect employers that maintain qualified plans, and participants and beneficiaries in those plans.

DATES: These regulations are effective December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1471. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated burden per respondent is .011 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Employee Plans CPE Technical Topics for 1999

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(a)(11) and section 417(e). These regulations finalize proposed regulations that were published as a notice of proposed rulemaking (EE-24-93) (REG-209626-93) in the Federal Register (60 FR 49236) on September 22, 1995. The notice of proposed rulemaking states that the text of the proposed regulations is the same as the text of temporary regulations which were published in the Federal Register (60 FR 49218) on the same day. A public hearing was held on the temporary regulations on April 24, 1996.

As indicated in Announcement 98-87 (1998-40 I.R.B. 11), the temporary regulations automatically expired in September, 1998, pursuant to section 7805(e). Announcement 98-87 provides, however, that plan sponsors may rely upon the identical proposed regulations until they are amended or finalized.

Prior to the issuance of the proposed regulations, ' 1.411(a)-11(c) provided that a participant's consent to a distribution under section 411(a)(11) was not valid unless the participant received a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Section 1.417(e)-1 set forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under section 417(a)(3) (QJSA explanation).

Temporary regulations providing guidance on the amendment to section 402(f) made by the Unemployment Compensation Amendments of 1992 (UCA), published in October 1992, generally prescribed this 90/30-day time period for purposes of the notice requirement under that section. In the preamble to the UCA temporary regulations, the IRS and Treasury requested comments on the appropriateness of this time period for section 411(a)(11), as well as for section 402(f).

In response to comments on the 90/30-day time period, the proposed regulations modified the 30-day time period for purposes of sections 411(a)(11) and 417. Under the proposed regulations, if, after having received the notice of distribution rights described in ' 1.411(a)-11, a participant affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution is made less than 30 days after the notice was provided to the participant.

The proposed regulations under section 417 made the same change to ' 1.417(e)-1 and also provided a more limited modification to the 30-day time period in ' 1.417(e)-1. The reception to this change to the 30-day period for purposes of section 417 was generally favorable.

Employee Plans CPE Technical Topics for 1999

Commentators expressed concern about the restatement in the proposed regulations of the statutory requirement that the QJSA explanation be provided before the annuity starting date because [*70010] this requirement precluded retroactive annuity payments for any period before the explanation was provided. Subsequently, section 1451 of the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755 (SBJPA) added section 417(a)(7) to the Internal Revenue Code effective for plan years beginning on or after January 1, 1997. Section 417(a)(7) permits the plan to provide the QJSA explanation after the annuity starting date.

After consideration of the comments, these final regulations generally adopt the provisions of the proposed regulations. However, the final regulations under section 417 have been modified to provide that, for plan years beginning after December 31, 1996, the requirement that the QJSA explanation be provided before the annuity starting date does not apply to the extent provided under section 417(a)(7).

Explanation of Provisions

1. Overview of Statutory Provisions

Section 411(a)(11) provides that, if the value of a participant's accrued benefit exceeds \$ 5,000, a qualified plan generally may not distribute the benefit to the participant without the participant's consent.

Section 401(a)(11) requires that certain distributions be made in the form of a qualified joint and survivor annuity (QJSA) unless, in accordance with section 417, the participant waives the QJSA and elects a different form of benefit. Profit-sharing plans and stock bonus plans that meet the requirements of sections 401(a)(11)(B)(iii)(I) through (III) are not subject to the survivor annuity requirements of sections 401(a)(11) and 417.

Section 417 sets forth the requirements applicable to a waiver of the QJSA. Section 417(a) requires the participant to obtain the consent of the participant's spouse, if any, to any waiver of the QJSA and election of a form of benefit other than a QJSA. Any election made by the participant must be revocable during the 90-day period ending on the annuity starting date. Section 417(a)(3) requires that, within a reasonable period of time before the participant's annuity starting date, a plan provide the participant with a notice explaining the participant's right to the QJSA and the participant's right to waive the QJSA (QJSA explanation).

Section 417(a)(7)(B), added by SBJPA, codified the provision in the proposed regulations which provides that a plan may permit a participant to elect (with applicable

Employee Plans CPE Technical Topics for 1999

spousal consent) a distribution with an annuity starting date after the QJSA explanation was provided but before 30 days have elapsed, as long as the distribution commences more than seven days after the explanation was provided. As discussed above, section 417(a)(7)(A) further provides that a plan is permitted to provide the QJSA explanation after the annuity starting date if the distribution commences at least 30 days after such explanation was provided, subject to the same waiver of the 30-day minimum waiting period. This is intended to allow retroactive payments of benefits which are attributable to the period before the explanation.

2. Waiver of 30-day Period for QJSA Explanation

The proposed regulations permit a plan administrator (where not inconsistent with the terms of the plan) to commence distributions before the end of the 30-day time period after the QJSA explanation is provided, if certain requirements are met. Specifically, after an affirmative distribution election, with any applicable spousal consent, the plan may permit the distribution to commence at any time more than seven days after the QJSA explanation was provided to the participant. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the QJSA explanation is provided. For example, if a married participant receives the explanation of the QJSA on November 28 and elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate single life annuity, the annuity starting date is permitted to be December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date.

Most commentators expressed approval of this change to the 30-day waiting period. However, one commentator indicated that this change would create an incentive for participants to pressure their spouses to consent to any waiver of the QJSA as quickly as possible. Because it has been codified by section 417(a)(7)(B), the final regulations retain this waiver provision.

3. Provision of QJSA Explanation After Annuity Starting Date

The proposed regulations provide that the annuity starting date must be a date after the explanation of the QJSA is provided to the participant, but may precede the date the participant affirmatively elects a distribution or the date the distribution commences. Commentators indicated that this rule disadvantaged participants because it does not allow a retroactive annuity starting date to a date before the QJSA explanation was provided. However, prior to its amendment by SBJPA, the plain language of section 417 required the QJSA explanation to be provided before the annuity starting date.

Employee Plans CPE Technical Topics for 1999

As discussed above, section 1451 of the SBJPA added section 417(a)(7)(A) to the Code. That section provides that a plan may provide the QJSA explanation after the annuity starting date and that the applicable election period shall not end before the 30th day after the date on which the explanation is provided. Thus, section 417(a)(7)(A) allows retroactive payments of benefits which are attributable to the period before the QJSA explanation is provided. Accordingly, the final regulations provide that, for plan years beginning after December 31, 1996, the requirement that the QJSA explanation be provided before the annuity starting date does not apply to the extent provided under section 417(a)(7).

Section 417(a)(7)(A) provides that the Secretary may by regulations limit its application except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

4. Use of Electronic Media for Notices and Consent

Comments on the proposed regulations requested that the IRS and Treasury clarify the extent to which plans may use new technologies, including electronic media, for providing notices under sections 402(f), 411(a)(11) and 417, and for receiving participant and beneficiary consents and elections under sections 411(a)(11) and 417. Subsequently, section 1510 of the Taxpayer Relief Act of 1997 (TRA '97) provided generally for the Secretary of the Treasury to issue guidance concerning the use of new technologies in the administration of retirement plans. Announcement 98-62 (1998-29 I.R.B. 13) requested comments on the guidance described in section 1510.

After consideration of the comments on the proposed regulations and Announcement 98-62, the IRS and Treasury have decided to propose regulations regarding the use of electronic media to provide notices under sections 402(f), 411(a)(11), and section 3405(e)(10) and for receiving participant consent under section 411(a)(11). Those proposed regulations are set forth in a notice of proposed [*70011] rulemaking published elsewhere in this issue of the Federal Register.

5. 90-day Time Period

Comments on the proposed regulations requested an expansion of the 90-day time period, and the IRS and the Treasury have decided to propose changes to the 90/30-day period for providing notices under sections 402(f) and 411(a)(11). These changes are included in the proposed regulations on the use of new technologies,

Employee Plans CPE Technical Topics for 1999

which are set forth in a notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

6. Effective Dates

The regulations apply to distributions on or after September 22, 1995. However, plan sponsors and plan administrators may rely on the regulations under section 411(a)(11) as though they were included in the final regulations under section 411(a)(11) published in 1988-2 C.B. 48.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Robert Walsh, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Employee Plans CPE Technical Topics for 1999

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.411(a)-11 is amended as follows:

1. Paragraph (c)(2)(ii) is revised.
2. Paragraphs (c)(2)(iii), (c)(2)(iv), (c)(2)(v) and (c)(8) are added.

The revision and additions read as follows:

' 1.411(a)-11 -- Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) * * *

(ii) Written consent of the participant to the distribution must not be made before the participant receives the notice of his or her rights specified in this paragraph (c)(2) and must not be made more than 90 days before the date the distribution commences.

(iii) A plan must provide participants with notice of their rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided that the following requirement is met. The plan administrator must provide information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (c)(2)(iii)) the participant has a right to at least 30 days to consider whether to consent to the distribution.

(iv) For purposes of satisfying the requirements of this paragraph (c)(2), the plan administrator may substitute the annuity starting date, within the meaning of ' 1.401(a)-20, Q&A-10, for the date the distribution commences.

Employee Plans CPE Technical Topics for 1999

(v) See ' 1.401(a)-20, Q&A-24 for a special rule applicable to consents to plan loans.

* * * * *

(8) Delegation to Commissioner. The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See ' 601.601(d)(2)(ii)(b) of this chapter.

* * * * *

' 1.411(a)-11T -- [Removed]

Par. 3. Section 1.411(a)-11T is removed.

Par. 4. Section 1.417(e)-1 is amended as follows:

1. Paragraph (b)(3) is revised.
2. Paragraph (b)(4) is added.

The revision and addition read as follows:

' 1.417(e)-1 -- Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) Time of consent. (i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date (except as otherwise provided by section 417(a)(7) for plan years beginning after December 31, 1996). However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the annuity starting date is less than 30 days after the written explanation was provided to the participant, provided that the following requirements are met:

Employee Plans CPE Technical Topics for 1999

(A) The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B) The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant (except as otherwise provided by section 417(a)(7) for plan years beginning after December 31, 1996). However, the plan may permit the annuity starting date to be before the date that any affirmative distribution [*70012] election is made by the participant and before the date that the distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section.

(D) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii) The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28.

Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(iv) The additional rules of this paragraph (b)(3) concerning the notice and consent requirements of section 417 apply to distributions on or after September 22, 1995. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in ' 1.417(e)-1(b)(3) in effect prior to September 22, 1995 (see ' 1.417(e)-1 (b)(3) in 26 CFR Part 1 revised as of April 1, 1995) apply.

Employee Plans CPE Technical Topics for 1999

(4) Delegation to Commissioner. The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See ' 601.601(d)(2)(ii)(b) of this chapter.

* * * * *

' 1.417(e)-1T -- [Amended]

Par. 5. In ' 1.417(e)-1T, paragraphs (b)(3) and (4) are removed.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In ' 602.101, the table in paragraph (c) is amended by removing the entry for 1.411(a)-11T and adding the following entries in numerical order to read as follows:

' 602.101 -- OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified	Current OMB control No. and described
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1.411(a)-11	1545-1471
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1.417(e)-1	1545-1471
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John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: December 2, 1998.

Employee Plans CPE Technical Topics for 1999

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-32938 Filed 12-17-98; 8:45 am]

BILLING CODE 4830-01-U

Employee Plans CPE Technical Topics for 1999

FEDERAL REGISTER

Vol. 63, No. 244

Proposed Rules

DEPARTMENT OF THE TREASURY
Internal Revenue Service (IRS)

26 CFR Part 1

[REG-113694-98]
RIN 1545-AW59

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

63 FR 70356

DATE: Monday, December 21, 1998

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations providing guidance relating to the increase from \$ 3,500 to \$ 5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. In addition, these proposed regulations propose the elimination, for all distributions, of the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. These proposed regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The text of those temporary regulations also serves as a portion of the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-113694-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8

Employee Plans CPE Technical Topics for 1999

a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-113694-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at <http://www.irs/ustreas.gov/prod/tax-regs/comments.html>.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael J. Karlan, (202) 622-6030 (not a toll-free call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to the increase from \$ 3,500 to \$ 5,000 of the "cash-out limit" described in sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code, as amended by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997).

The text of the temporary regulations also serves as a portion of the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

As also discussed in the preamble to the temporary regulations, ' 1.411(a)-11(c)(3), interpreting the law prior to the enactment of TRA '97, provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$ 3,500. If the present value does not exceed \$ 3,500, the consent requirements are deemed satisfied, and the plan may distribute that portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$ 3,500, then the present value at any subsequent time shall be deemed to exceed \$ 3,500; this is commonly referred to as the "lookback rule." Section 1.417(e)-1(b)(2)(i) includes a parallel lookback rule.

The temporary regulations remove the lookback rule under section 411(a)(11) for most distributions, but preserve the rule for distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable.

These proposed regulations remove the lookback rule under ' 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i). In accordance with section 417(e)(1), these proposed regulations

Employee Plans CPE Technical Topics for 1999

also provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, [*70357] this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

Under this removal of the lookback rule, the present value of a participant's nonforfeitable accrued benefit could be distributed without consent if the present value does not exceed \$ 5,000, even if the present value of the participant's nonforfeitable accrued benefit exceeded \$ 5,000 at the time of a previous distribution. Thus, if the present value of a participant's nonforfeitable accrued benefit previously had been \$ 6,000, but is presently \$ 4,000, these proposed regulations would permit the plan to be amended to permit the present value of that participant's nonforfeitable accrued benefit to be distributed without consent (provided that the distribution would not fail to satisfy section 417(e)(1)). The complete removal of the lookback rule described in these proposed regulations would become effective 90 days after the publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Employee Plans CPE Technical Topics for 1999

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development. List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

' 1.411(a)-7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)-7 is amended by revising paragraphs (d)(4)(i) and (d)(4)(vi) to read as follows:

' 1.411(a)-7 -- Definitions and special rules.

* * * * *

(d) Rules relating to certain distributions and cash-outs of accrued benefits. * * *

Employee Plans CPE Technical Topics for 1999

(4) Certain cash-outs of accrued benefits. (i) and (vi) [The text of proposed paragraphs (d)(4)(i) and (vi) is the same as the text of ' 1.411(a)-7T(d)(4)(i) and (vi) published elsewhere in this issue of the Federal Register.]

* * * * *

Par. 3. Section 1.411(a)-11 is amended by revising paragraph (c)(3) to read as follows:

' 1.411(a)-11 -- Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) Cash-out limit. (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see ' 1.417(e)-1(d).

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of ' 1.411(a)-11T(c)(3)(ii) published elsewhere in this issue of the Federal Register.]

* * * * *

Par. 4. Section 1.417(e)-1 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

' 1.417(e)-1 -- Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

Employee Plans CPE Technical Topics for 1999

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity regardless of the amount of such present value.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 98-32929 Filed 12-18-98; 8:45 am]

BILLING CODE 4830-01-P

Employee Plans CPE Technical Topics for 1999

[4830-01-u]
DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[Treasury Decision 8768]
RIN 1545-AT27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations under Section 417(e).

SUMMARY: This document contains final and temporary regulations that provide guidance to employers in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution made in any form other than certain nondecreasing annuity forms. These regulations are issued to reflect changes to the applicable law made by the Retirement Protection Act of 1994 (RPA '94), which is part of the Uruguay Round Agreements Act of 1994. RPA '94 amended the law to change the interest rate, and to specify the mortality table, for the purposes described above. These regulations affect employers that maintain qualified defined benefit pension plans, and participants and beneficiaries in those plans.

DATES: Effective date: These regulations are effective April 3, 1998.

Applicability date: These regulations apply to plan years beginning after December 31, 1994, except as provided in section 1.417(e)-1(d)(8) and (9).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 417(e). Section 417(e) was amended by the Retirement Protection Act of 1994 (RPA '94). On April 5, 1995, temporary regulations (TD 8591) under section 417(e) were published in the Federal Register (60 FR 17216). A notice of proposed rulemaking (EE-12-95), cross-referencing the temporary regulations, was published in the Federal Register (60 FR 17286) on the same day. The temporary regulations provide guidance related to the determination of the present value of an employee's

Employee Plans CPE Technical Topics for 1999

benefit under a qualified defined benefit pension plan in accordance with the rules of section 417(e)(3). After consideration of the public comments received regarding the temporary and proposed regulations, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision.

Section 417(e)(3) sets forth rules to be used in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution. The rules of section 417(e)(3) are also relevant to the application of section 411(a)(11) and section 415(b). Section 411(a)(11) provides that a participant's benefit with a present value that exceeds a statutory threshold can be immediately distributed to a participant only with the participant's consent. The level of this statutory threshold was changed from \$ 3,500 to \$ 5,000 by the Taxpayer Relief Act of 1997, effective for plan years beginning after August 5, 1997. Under section 411(a)(11)(B), as amended by RPA '94, the present value of a participant's benefit is calculated using the rules of section 417(e)(3).

Section 415(b) limits the maximum benefit that can be provided under a qualified defined benefit plan. Under section 415(b)(2)(E)(ii), as amended by RPA '94, the minimum interest rate permitted to be used for certain purposes to determine compliance with the limit under section 415(b) is the applicable interest rate as defined in section 417(e)(3). Because the rules of section 417(e)(3) affect the application of sections 411(a)(11)(B) and 415(b)(2)(E)(ii), the guidance provided by these regulations is relevant to the application of those provisions.

Explanation of provisions

Section 417(e) restricts the ability of certain qualified retirement plans to distribute a participant's benefit under the plan without the consent of the participant and, in many cases, the participant's spouse. The application of these restrictions is determined based on the present value of the participant's benefit. Prior to amendments made by RPA '94, section 417(e)(3) restricted the interest rate to be used under a plan to calculate the present value of a participant's benefit, but did not impose any restrictions on the mortality table to be used for that purpose. Section 767 of RPA '94 modified section 417(e)(3) to provide that the present value of a participant's benefit is not less than the present value calculated by using the applicable mortality table and the applicable interest rate.

In general, comments received on the proposed and temporary regulations were favorable. Thus, the final regulations retain the general structure and substance of the proposed and temporary regulations.

Employee Plans CPE Technical Topics for 1999

Applicable mortality table

The applicable mortality table under section 417(e)(3) is defined as the table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)). Currently, the prevailing commissioners' standard table is the 1983 Group Annuity Mortality Table. See Rev. Rul. 92-19 (1992-1 C.B. 227). These regulations retain the provision in the temporary regulation that the applicable mortality table as described above is to be prescribed by the Commissioner in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin. The mortality table currently prescribed by the Commissioner is set forth in Rev. Rul. 95-6 (1995-1 C.B. 80), and is based on a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table.

Applicable interest rate

Under section 417(e)(3), the applicable interest rate is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These regulations retain the rule in the temporary regulations that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month. The Commissioner publishes this interest rate for each month by notice, after the end of the month. Currently, this interest rate is the interest rate published in Federal Reserve releases G.13 and H.15 as the average yield on 30-year Treasury Constant Maturities for the month.

The interest rate on 30-year Treasury Constant Maturities published monthly in Federal Reserve releases G.13 and H.15 can also be obtained by telephone from the Public Information Department of the Federal Reserve Bank of New York at (212) 720-6130 (not a toll-free number), or from the Federal Reserve Board of Governors' Internet site at <http://www.bog.frb.fed.us/releases>. Information regarding subscriptions to Federal Reserve releases G.13 and H.15 can be obtained from the Publications Department of the Federal Reserve Board of Governors at (202) 452-3244 (not a toll-free number).

Time for determining applicable interest rate

Employee Plans CPE Technical Topics for 1999

Section 417(e)(3)(A)(ii)(II) provides that the applicable interest rate for distributions made during a month is the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. As an alternative to this monthly change in the applicable interest rate, the temporary regulations permitted selection of a plan quarter or a plan year as a stability period during which the applicable interest rate remains constant, thereby permitting plans to offer greater benefit stability than is provided by the statutory rule. One commentator suggested adding a calendar year and a calendar quarter as additional alternative stability periods for the applicable interest rate, and another suggested adding a plan half-year. The IRS and Treasury have weighed the usefulness of the additional proposed stability periods for taxpayers against the additional complexity that would be added to the regulation, and have added a calendar year and a calendar quarter as additional alternative stability periods.

These regulations retain the rule in the temporary regulations that the applicable interest rate for the stability period may be determined as the 30-year Treasury rate for any one of the five calendar months preceding the first day of the stability period. Permitting this "lookback" of up to five months provides added flexibility and gives plan administrators and participants more time to comply with applicable notice and election requirements using the actual interest rate (instead of an estimate).

Several commentators suggested that regulations permit an average of lookback month interest rates to be used, in lieu of the interest rate for a single lookback month, to minimize interest rate fluctuations. These regulations adopt this suggestion, and permit an average interest rate based on consecutive permitted lookback months to be used for this purpose.

Several commentators suggested that a plan be allowed to provide for different applicable interest rates for each portion of the plan that independently meets the requirements of sections 410(b) and 401(a)(26). The IRS and Treasury have determined, however, that there is insufficient basis for adopting a definition of a "plan" that is different from the general definition set forth in section 1.414(l)-1(b)(1).

Employee Plans CPE Technical Topics for 1999

Exceptions from the requirements of section 417(e)(3)

The temporary regulations provided an exception from the requirements of section 417(e)(3) and section 1.417(e)-1T(d) for the amount of a distribution under a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a QPSA, the life of the surviving spouse. For purposes of this exception, a nondecreasing annuity included a QJSA, a QPSA, and an annuity that decreased merely because of the cessation or reduction of Social Security supplements or qualified disability payments (as defined in section 411(a)(9)). This exception was identical to the exception provided under former final regulations. Several commentators pointed out that this exception did not cover several other types of annuity forms of distribution that were nondecreasing during the life of the participant, and suggested that the regulations be changed to provide additional exceptions for these additional annuity forms of distribution.

The IRS and Treasury have determined that it is appropriate to provide additional exceptions for these benefit forms. Accordingly, under the final regulations, section 417(e)(3) and section 1.417(e)-1(d) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability benefits. Also, under Q&A-2 of Rev. Rul. 98-1 (1998-2 I.R.B. 1), the interest rate prescribed by section 415(b)(2)(E)(ii) does not apply to these forms of benefit.

Effective dates

These regulations generally apply to plan years beginning after December 31, 1994.

Under section 417(e)(3)(B) and these regulations, the general effective date for the RPA '94 rules is delayed for certain plans until the first plan year that begins after December 31, 1999, unless an employer takes earlier action. The delayed effective date applies to a plan adopted and in effect before December 8, 1994, if the provisions of the plan in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on December 7, 1994. For such a plan, the determination of whether a distribution made before the first day of the first plan year that begins after December 31, 1999, satisfies section 417(e) is made under the provisions of the plan in effect on December 7, 1994, if the annuity starting date for the distribution occurs before the date a plan amendment applying both the applicable mortality table and the applicable

Employee Plans CPE Technical Topics for 1999

interest rate rules added by RPA '94 is adopted or, if later, is made effective. Thus, under section 417(e)(3)(B) and these regulations, a plan that was adopted and in effect before December 8, 1994, and the provisions of which, as in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on that date, cannot be amended to provide a different method of calculating the present value of a distribution under section 417(e)(3) effective before the date a plan amendment applying both the applicable mortality table and the applicable interest rate rules added by RPA '94 is adopted or, if later, is made effective.

One commentator inquired whether, where a plan is spun off from another plan during the optional delayed effective date period, both plans are required to be amended to apply the applicable mortality table and the applicable interest rate rules added by RPA '94 effective on the same date. Because these rules apply on a plan by plan basis, the plans are not required to be amended effective on the same date. One other commentator suggested that the regulations be changed to permit a plan to provide for different optional delayed effective dates for each separate benefit structure that independently meets the requirements of section 401(a)(4). Section 417(e)(3)(B) requires a single effective date for a plan amendment applying the applicable mortality table and the applicable interest rate rules added by RPA '94. Therefore, this suggestion is inconsistent with the statute. Of course, a plan amendment that applies the applicable mortality table and the applicable interest rate rules added by RPA '94 may provide for temporary or permanent use of interest and mortality assumptions for specified participant groups that result in larger distributions than the minimum required under these RPA '94 rules, provided that other qualification requirements (such as section 401(a)(4)) are satisfied.

These regulations restate the rules applicable to plan years beginning before January 1, 1995, without substantive change. Those pre-1995 rules also apply to later plan years, to the extent that the application of the RPA '94 rules is delayed as described above.

In addition, section 767(d)(1) of RPA '94 permits an employer to elect to accelerate the effective date of the RPA '94 rules, and hence these regulations, in order to apply the RPA '94 rules to distributions with annuity starting dates occurring after December 7, 1994, in plan years beginning before January 1, 1995. An employer that makes a plan amendment applying the applicable mortality table and the applicable interest rate rules of these regulations is treated as making this election as of the date the plan amendment is adopted or, if later, is made effective.

Relationship with section 411(d)(6)

Employee Plans CPE Technical Topics for 1999

Section 411(d)(6) provides that a plan does not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. In general, a plan amendment that changes the interest rate or the mortality assumptions used for purposes of determining the amount of any accrued benefit in any preexisting optional form is subject to section 411(d)(6). Consistent with both the temporary regulations and the prior final regulations, these regulations provide limited section 411(d)(6) relief for certain plan amendments that change the time for determining the applicable interest rate. A plan amendment that changes the time for determining the applicable interest rate will not be treated as violating section 411(d)(6) if each distribution made until one year after the later of the effective date or the adoption date of the amendment is calculated using the time for determining the applicable interest rate as provided before or after the amendment, whichever produces the larger benefit. For this purpose, all other plan provisions must be applied as in effect after the amendment.

Section 767(d)(2) of RPA '94 provides that a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because the benefit is determined in accordance with the applicable interest rate rules and the applicable mortality table rules of section 417(e)(3)(A), as amended by RPA '94. These regulations provide that an amendment replacing an interest rate used for purposes of section 417(e)(3) qualifies for this section 411(d)(6) relief if the interest rate replaced is the Pension Benefit Guaranty Corporation (PBGC) interest rate or a rate based on the PBGC interest rate. Pursuant to suggestions made by several commentators, these regulations clarify that the interest rates that may be replaced pursuant to this section 411(d)(6) relief include an interest rate based on the average of the PBGC interest rates over a specified period. In addition, pursuant to suggestions made by two commentators, the final regulations clarify the relationship between the various types of section 411(d)(6) relief under the regulations, and provide some additional flexibility to employers in determining how to transition between the PBGC interest rate and the applicable interest rate and applicable mortality table, where the transition is combined with a change in the time for determining the interest rate.

One commentator asked whether the section 411(d)(6) relief for plan amendments adopting the applicable mortality table and the applicable interest rate rules applies with respect to terminated vested participants. Because the section 411(d)(6) relief provided under section 767(d)(2) of RPA '94 applies in the same manner with respect to active and terminated participants, the regulations likewise do not distinguish terminated vested participants from other participants in this regard.

Several commentators requested that the regulations be amended to provide unconditional section 411(d)(6) relief for plan amendments adopting the applicable

Employee Plans CPE Technical Topics for 1999

interest rate and applicable mortality table rules of RPA '94 regardless of changes in the time for determining the applicable interest rate. The IRS and Treasury have determined that providing some additional flexibility to employers in determining how to transition between the PBGC interest rate and the applicable interest rate and applicable mortality table, as discussed above, where the transition is combined with a change in the time for determining the interest rate, strikes an appropriate balance between the practical concerns of employers and the rights of participants.

These regulations further provide that, where a plan provided for the use of an interest rate not based on the PBGC interest rate prescribed by section 417(e)(3) as in effect before amendments made by RPA '94, a plan amendment that eliminates the use of that interest rate and the associated mortality table may result in a reduction of a participant's accrued benefit, which would violate the requirements of section 411(d)(6). Two commentators suggested that final regulations provide section 411(d)(6) relief for plan amendments that eliminate the use of an interest rate not based on the PBGC interest rate, for plan amendments that adopt the applicable interest rate and applicable mortality table rules of RPA '94. Another commentator requested that final regulations provide for similar section 411(d)(6) relief, but only for mandatory distributions that are permitted pursuant to the rules of section 411(a)(11). The IRS and Treasury have determined that section 767(d)(2) of RPA '94 does not support a grant of section 411(d)(6) relief with respect to plan amendments eliminating interest rates that are not based on the PBGC interest rate.

These regulations provide examples of the application of section 411(d)(6) and the special rule of section 767(d)(2) of RPA '94, including an example illustrating the use of a phase-in that provides for a smoother transition from the plan's former terms to the new rules. In addition, these regulations provide section 411(d)(6) relief for certain plan amendments that eliminate use of the applicable interest rate and the applicable mortality table with respect to distribution forms that are newly excepted from the application of section 417(e)(3) by these regulations.

The PBGC has advised the IRS and Treasury that it has not made any decision at this time on whether it will continue to calculate and publish the relevant interest rates after the year 2000. Therefore, in amending plans to comply with these regulations, employers should not rely on the continued determination and publication of these rates by the PBGC beyond the year 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It

Employee Plans CPE Technical Topics for 1999

also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:
PART 1 -- INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority 26 U.S.C. 7805 * * *

Section 1.417(e)-1 also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II). * * *

Par. 2. In section 1.417(e)-1, paragraph (d) is revised to read as follows:

SECTION 1.417(e)-1 RESTRICTIONS AND VALUATIONS OF DISTRIBUTIONS
FROM

PLANS SUBJECT TO SECTION S 401(A)(11) AND 417.

* * * * *

Employee Plans CPE Technical Topics for 1999

(d) PRESENT VALUE REQUIREMENT --

(1) GENERAL RULE. A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) Applicable mortality table. The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see section 601.601(d)(2)(ii)(b) of this chapter). The Commissioner may prescribe rules that apply in the case of a change to the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see section 601.601(d)(2)(ii)(b) of this chapter).

(3) Applicable interest rate -- (i) General rule. The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see section 601.601(d)(2)(ii)(b) of this chapter).

(ii) Example. This example illustrates the rules of this paragraph (d)(3):

EXAMPLE. Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95-6 (1995-1 C.B. 80), and that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of \$ 1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year

Employee Plans CPE Technical Topics for 1999

Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single sum received by P may not be less than \$ 111,351.

(4) Time for determining interest rate --

(i) General rule. Except as provided in paragraph (d)(4)(iv) or (v) of this section, the applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) Stability period. A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year.

(iii) Lookback month. A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv) Permitted average interest rate. A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average interest rate with respect to the plan's stability period for the rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average interest rate with respect to a stability period is an interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(iv) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(v) Additional determination dates. The Commissioner may prescribe, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see section 601.601(d)(2)(ii)(b)), other times that a plan may provide for determining the applicable interest rate.

Employee Plans CPE Technical Topics for 1999

(vi) Example. This example illustrates the rules of this paragraph (d)(4):

EXAMPLE. Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) Use of alternative interest rate and mortality table. If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit produced by using the applicable interest rate and the applicable mortality table. For example, if a plan provides for use of an interest rate of 7% and the UP-1984 Mortality Table (see section 1.401(a)(4)-12, Standard mortality table) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using 7% and the UP-1984 Mortality Table and the single-sum benefit calculated using the applicable interest rate and the applicable mortality table.

(6) Exceptions. This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that --

(i) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(ii) Decreases during the life of the participant merely because of --

(A) The death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant); or

(B) The cessation or reduction of Social Security supplements or qualified disability benefits (as defined in section 411(a)(9)).

(7) Defined contribution plans. Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject

Employee Plans CPE Technical Topics for 1999

to the requirements of this paragraph (d), even though it is subject to section 401(a)(11).

(8) Effective date --

(i) In general. This paragraph (d) is effective for distributions with annuity starting dates in plan years beginning after December 31, 1994.

(ii) Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94)(108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994. For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the applicable mortality table and applicable interest rate under paragraphs (d)(2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) and section 1.417(e)-1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before January 1, 1995) apply in lieu of the rules of paragraphs (d)(2) through (4) of this section. The interest rate under the rules of paragraph (d)(9) of this section is determined under the provisions of the plan as in effect on December 7, 1994, reflecting the interest rate or rates published by the Pension Benefit Guaranty Corporation (PBGC) and the provisions of the plan for determining the date on which the interest rate is fixed. The above described interest rate or rates published by the PBGC are those determined by the PBGC (for the date determined under those plan provisions) pursuant to the methodology under the regulations of the PBGC for determining the present value of a lump sum distribution on plan termination under 29 CFR part 2619 that were in effect on September 1, 1993 (as contained in 29 CFR part 2619 revised July 1, 1994).

(iii) Optional accelerated effective date of RPA '94 rules. This paragraph (d) is also effective for a distribution with an annuity starting date after December 7, 1994, during a plan year beginning before January 1, 1995, if the employer elects, on or before the annuity starting date, to make the rules of this paragraph (d) effective with respect to the plan as of the optional accelerated effective date described in paragraph (d)(8)(iv) of this section. An employer is treated as

Employee Plans CPE Technical Topics for 1999

making this election by making the plan amendments described in paragraph (d)(8)(iv) of this section.

(iv) Determination of delayed or accelerated effective date by plan amendment adopting RPA '94 rules. The optional delayed effective date of paragraph (d)(8)(ii) of this section, or the optional accelerated effective date of paragraph (d)(8)(iii) of this section, whichever is applicable, is the date plan amendments applying both the applicable mortality table of paragraph (d)(2) of this section and the applicable interest rate of paragraph (d)(3) of this section are adopted or, if later, are made effective.

(9) Plan years beginning before January 1, 1995 --

(i) Interest rate.

(A) For distributions made in plan years beginning after December 31, 1986, and before January 1, 1995, the following interest rate described in paragraph (d)(9)(i)(A)(1) or (2) of this section, whichever applies, is substituted for the applicable interest rate for purposes of this section --

(1) The rate or rates that would be used by the PBGC for a trustee single-employer plan to value the participant's (or beneficiary's) vested benefit (PBGC interest rate) if the present value of such benefit does not exceed \$ 25,000; or

(2) 120 percent of the PBGC interest rate, as determined in accordance with paragraph (d)(9)(i)(A)(1) of this section, if such present value exceeds \$ 25,000. In no event shall the present value determined by use of 120 percent of the PBGC interest rate result in a present value less than \$ 25,000.

(B) The PBGC interest rate may be a series of interest rates for any given date. For example, the PBGC interest rate for immediate annuities for November 1994 is 6%, and the PBGC interest rates for the deferral period for that month are as follows: 5.25% for the first 7 years of the deferral period, 4% for the following 8 years of the deferral period, and 4% for the remainder of the deferral period. For November 1994, 120 percent of the PBGC interest rate is 7.2% (1.2 times 6%) for an immediate annuity, 6.3% (1.2 times 5.25%) for the first 7 years of the deferral period, 4.8% (1.2 times 4%) for the following 8 years of the deferral period, and 4.8% (1.2 times 4%) for the remainder of the deferral period. The PBGC interest rates are the interest rates that would be used (as of the date of

Employee Plans CPE Technical Topics for 1999

the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trustee single employer plan. Except as otherwise provided by the Commissioner, the PBGC interest rates are determined by PBGC regulations. See subpart B of 29 CFR part 4044 for the applicable PBGC rates.

(ii) Time for determining interest rate.

(A) Except as provided in paragraph (d)(9)(ii)(B) of this section, the PBGC interest rate or rates are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(B) The plan may provide for the use of any other time for determining the PBGC interest rate or rates provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(C) The Commissioner may, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see section 601.601(d)(2)(ii)(b)), prescribe other times for determining the PBGC interest rate or rates.

(iii) No applicable mortality table. In the case of a distribution to which this paragraph (d)(9) applies, the rules of this paragraph (d) are applied without regard to the applicable mortality table described in paragraph (d)(2) of this section.

(10) Relationship with section 411(d)(6) --

(i) In general. A plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section is subject to section 411(d)(6). But see section 1.411(d)-4, Q&A- 2(b)(2)(v) (regarding plan amendments relating to involuntary distributions). In addition, a plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section merely to eliminate use of the interest rate described in paragraph (d)(3) or paragraph (d)(9) of this section, or the applicable mortality table, with respect to a distribution form described in paragraph (d)(6) of this section, for distributions with annuity starting dates occurring after a specified date that is after the amendment is adopted, does not violate the requirements of section 411(d)(6) if the amendment is adopted on or before the last day of the last plan year ending before January 1, 2000.

Employee Plans CPE Technical Topics for 1999

(ii) Section 411(d)(6) relief for change in time for determining interest rate.

Notwithstanding the general rule of paragraph (d)(10)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (including an indirect change as a result of a change in plan year), the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(10)(ii) are satisfied. If the plan amendment is effective on or after the adoption date, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be determined using the interest rate provided under the plan determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

(iii) Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for statutory interest rate determination date.

Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(iv) Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for prior determination date or up to two months earlier.

Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the

Employee Plans CPE Technical Topics for 1999

present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate, but only if the applicable interest rate is the annual interest rate on 30-year Treasury securities for the calendar month that contains the date as of which the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) was determined immediately before the amendment, or for one of the two calendar months immediately preceding such month.

(v) Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94 providing for other interest rate determination date. Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d);

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate; and

(C) The plan amendment satisfies either the condition of paragraph (d)(10)(ii) of this section (determined using the interest rate provided under the terms of the plan after the effective date of the amendment) or the special early transition interest rate rule of paragraph (d)(10)(vi)(C) of this section.

(vi) Special rules --

Employee Plans CPE Technical Topics for 1999

(A) Provision of temporary additional benefits. A plan amendment described in paragraph (d)(10)(iii), (iv), or (v) of this section is not considered to reduce a participant's accrued benefit in violation of section 411(d)(6) even if the plan amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules.

(B) Replacement of non-PBGC interest rate. The section 411(d)(6) relief provided in paragraphs (d)(10)(iii) through (v) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6). For purposes of this paragraph (d), an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC interest rate, the PBGC interest rate minus a specified number of basis points, or an average of such interest rates over a specified period.

(C) Special early transition interest rate rule for paragraph (d)(10)(v). A plan amendment satisfies the special rule of this paragraph (d)(10)(vi)(C) if any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective is determined using whichever of the following two interest rates results in the larger distribution --

(1) The interest rate as provided under the terms of the plan after the effective date of the amendment, but determined at a date that is either one month or two months (as specified in the plan) before the date for determining the interest rate used under the terms of the plan before the amendment; or

(2) The interest rate as provided under the terms of the plan after the effective date of the amendment, determined at the date for determining the interest rate after the amendment.

(vii) Examples. The provisions of this paragraph (d)(10) are illustrated by the following examples:

EXAMPLE 1. On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are

Employee Plans CPE Technical Topics for 1999

calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iii) of this section, this amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6).

EXAMPLE 2. On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%.

On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iv) of this section, this amendment of Plan B is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6) merely because of the replacement of the PBGC interest rate. However, under paragraph (d)(10)(vi)(B) of this section, the section 411(d)(6) relief provided in paragraphs (d)(10)(iii) through (v) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or a rate based on the PBGC interest rate). Therefore, pursuant to paragraph (d)(10)(vi)(B) of this section, to satisfy the requirements of section 411(d)(6), the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP-1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

EXAMPLE 3. On December 31, 1994, Plan C, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan C was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for January of the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraph (d)(10)(v) of this section, the amendment of Plan C is not

Employee Plans CPE Technical Topics for 1999

considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

EXAMPLE 4.

(a) Employer X maintains Plan D, a calendar year plan. As of December 7, 1994, Plan D provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than \$ 25,000, and 120% of that interest rate (but not an interest rate producing a present value less than \$ 25,000) for distributions over \$ 25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3). On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan D to provide that single-sum distributions are determined as the sum of --

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30- year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the years 1996-99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this Example 4. The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Pursuant to paragraphs (d)(10)(iii) and (vi)(A) of this section, the amendment of Plan D is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

EXAMPLE 5. On December 31, 1994, Plan E, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan E was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated

Employee Plans CPE Technical Topics for 1999

using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for November of the plan year preceding the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraphs (d)(10)(v) and (vi)(C) of this section, the amendment of Plan E is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6).

Par. 3. In section 1.417(e)-1T, paragraph (d) is revised to read as follows:

**SECTION 1.417(e)-1T RESTRICTIONS AND VALUATIONS OF DISTRIBUTIONS
FROM PLANS SUBJECT TO SECTION S 401(A)(11) AND 417. (TEMPORARY)**

* * * * *

(d) For rules regarding the present value of a participant's accrued benefit and related matters, see section 1.417(e)- 1(d).

Michael P. Dolan
Deputy Commissioner of Internal
Revenue Approved: March 30, 1998
Donald C. Lubick
Assistant Secretary of the
Treasury