

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8891]

RIN 1545-AW59

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations 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 or spousal consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate the “lookback rule” pursuant to which certain qualified plan benefits are deemed to exceed this limit on involuntary distributions. The final regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans.

DATES: Effective Date: These regulations are effective October 17, 2000.

Applicability Date: These regulations generally apply to distributions made on or after October 17, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1998, a notice of proposed rulemaking (REG-113694-98) was published in the **Federal Register** (63 FR 70356) regarding the “cash-out limit” under sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code. That same day, temporary and final regulations (TD 8794) were published in the **Federal Register** (63 FR 70335) which amended the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) relating to the increase in the cash-out limit enacted by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997) (TRA ‘97). The text of the temporary regulations served as a portion of the text of the proposed regulations. Very few comments were submitted on the proposed regulations; no hearing was requested or held. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations.

Explanation of Provisions

The temporary regulations made several changes to the cash-out rules under sections 411(a)(7), 411(a)(11), and 417(e)(1). In accordance with section 1071 of TRA ‘97, the temporary regulations increased the cash-out limit from \$3,500 to \$5,000. Thus, a qualified plan can generally distribute vested accrued benefits valued at \$5,000 or less without participant or spousal consent. The temporary regulations also provided that, for purposes of section 411(a)(7)(B)(i), an involuntary distribution of an employee’s vested accrued benefit valued at \$5,000 or less could be treated as made due to termination of the employee’s participation if the distribution could have been

made at termination of participation but for the fact that the benefit was then valued at more than \$3,500. Finally, the temporary regulations amended §1.411(a)-11(c)(3) to eliminate the “lookback rule” for distributions other than those made pursuant to an optional form of benefit under which at least one scheduled periodic distribution remained payable. Prior to this amendment, the lookback rule in §1.411(a)-11(c)(3) provided that the present value of a vested accrued benefit was deemed to exceed the cash-out limit if it had exceeded the cash-out limit at the time of any previous distribution. The temporary regulations did not change the parallel lookback rule under §1.417(e)-1(b)(2)(i).

The proposed regulations generally included the provisions of the temporary regulations, but they also proposed the complete removal (on a prospective basis) of the lookback rule under both §§1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i). Thus, under the proposed regulations, the lookback rule would be eliminated both for plans subject to the spousal-consent provisions of sections 401(a)(11) and 417 and for plans not subject to those provisions. Under this removal of the lookback rule, a participant's vested accrued benefit valued at \$5,000 or less could be distributed without consent even if the benefit had been valued at more than \$5,000 at the time of a previous distribution. However, in accordance with section 417(e)(1), the proposed regulations also provided that, in the case of plans subject to sections 401(a)(11) and 417, consent would be required after the annuity starting date for the immediate distribution of the present value of an 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.

Very few comments were received on the proposed regulations. One commentator inquired whether a cash-out could be made of a benefit presently valued at \$4,500 that had been valued at \$4,000 upon termination of the employee's employment more than two years earlier. As indicated in the preamble to the final and temporary regulations published with the proposed regulations, that benefit could be cashed out.

Another commentator indicated support for the content of the proposed regulations but expressed concern about the rule, derived from section 417(e)(1), prohibiting a cashout after the annuity starting date of a benefit being distributed in any form by a plan subject to sections 401(a)(11) and 417. The commentator observed that, under section 417(f)(2)(A), the annuity starting date for a benefit payable upon termination of employment in non-annuity form could be the date of termination. The commentator argued that the rule in the proposed regulations prohibiting a cashout after the annuity starting date could be read to preclude a cashout of a non-annuity benefit payable at termination, regardless of the present value of that benefit. To address this, the commentator urged the IRS and Treasury to redefine "annuity starting date" such that a cashout would be permitted as long as a benefit remains immediately distributable (that is, until the later of normal retirement age or age 62).

The provision in the proposed regulations prohibits a cashout after the annuity starting date of a benefit "being distributed in any form." The rule does not apply to any

benefit that is not yet “being distributed” -- that is, to any benefit with respect to which no payment has been made. If the present value of a benefit payable on or after termination of employment does not exceed the cashout limit, the rule of section 417(e)(1), as set forth in the proposed regulations, would not prohibit a cashout prior to the date on which a payment is first made (disregarding, obviously, the cashout payment itself). Thus, no change has been made to the regulations on this point.

Another commentator objected to the complete elimination of the lookback rule under the proposed regulations. The commentator cited three reasons for its opposition: first, that an amount distributed in a hardship or other type of distribution remains part of a participant’s benefit; second, that a participant could manipulate a distribution in order to evade the spousal-consent requirements; and, third, that permitting cash-outs after a hardship or other distribution is contrary to the policy of discouraging non-retirement distributions.

In contrast, a comment received prior to the issuance of the proposed regulations noted problems faced by plan administrators due to the lookback rule. The commentator noted, for example, that if a plan provides for hardship distributions, the plan administrator must review its records to determine the value of the participant’s benefits at the time of any prior distribution. The commentator added that this can be particularly difficult and costly where plans sponsored by other employers have merged into the plan. The commentator further stated that the cash-out provisions are designed to allow plans to reduce their administrative costs by making lump sum payments to participants with small benefits and that the lookback rule is contrary to

that design because the rule (1) makes it more costly for administrators to determine whether the provisions apply and (2) can prevent a plan from relying on the provisions in many cases where the value of the participant's current benefit is well below \$5,000.

After consideration of the comments, the IRS and Treasury have decided to adopt the regulation eliminating the lookback rule as proposed. The IRS and Treasury believe that the statutory cash-out provisions represent a balancing of the interests of participants in maintaining their benefits in qualified plans with the reasonable administrative needs of plan sponsors and administrators. The lookback rule prevents plans from cashing out a benefit currently valued below the cash-out limit simply because it had been valued above the cash-out limit at the time of an earlier distribution. This creates disparity in the treatment of benefits of equivalent value and requires plans to incur additional recordkeeping and other administrative costs.

The IRS and Treasury note that removal of the lookback rule is unlikely to present significant opportunities for participants to evade the spousal-consent rules. In the case of any plan subject to the spousal-consent provisions of sections 401(a)(11) and 417, a distribution that draws a participant's accrued benefit from a value above the cash-out limit to a value at or below the cash-out limit will itself require spousal consent. Furthermore, these final regulations strengthen the spousal-consent rules by clarifying that a plan subject to sections 401(a)(11) and 417 may not distribute a benefit after the annuity starting date without consent. This prohibition on cash-outs after the annuity starting date, which is statutory in source, applies without regard to the value of the benefit at the annuity starting date and without regard to the distribution form.

Finally, the IRS and Treasury note that concerns about non-retirement distributions of benefits are mitigated by the availability of rollovers. In almost all cases, an amount distributed from a qualified plan in a cash-out distribution will be an eligible rollover distribution that can be paid directly (or indirectly, through a 60-day rollover) to another qualified retirement plan or individual retirement arrangement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert M. Walsh, 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

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

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 removing the entry for §1.411(a)-7T and by adding a new 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 as follows:

1. Paragraph (d)(4)(i) is revised;
2. Paragraphs (d)(4)(vi) and (d)(4)(vii) are added.

The revision and additions read as follows:

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

* * * * *

(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 paragraph (d)(4)(iv) of this section in effect at the time of the distribution.

* * * * *

(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 §1.411(a)-11(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in paragraph (d)(2)(i) of this section.

(vii) Effective date. Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999. 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. Otherwise, for distributions prior to March 22, 1999, §§1.411(a)-7 and 1.411(a)-7T, in effect prior to October 17, 2000 (as contained in 26 CFR part 1, revised as of April 1, 2000) apply.

* * * * *

§1.411(a)-7T [Removed]

Par. 3. Section 1.411(a)-7T is removed.

Par. 4. 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 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 October 17, 2000. However, an employer is permitted to apply the \$5,000 cash-out limit described in paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997. Otherwise, for distributions prior to October 17, 2000, §1.411(a)-11 and 1.411(a)-11T in effect prior to October 17, 2000 (as contained in 26 CFR Part 1 revised as of April 1, 2000) apply.

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§1.411(a)-11T [Removed]

Par. 5. Section 1.411(a)-11T is removed.

Par. 6. Section 1.417(e)-1 is amended by revising the last sentence of paragraph (b)(2)(i) and by adding new paragraph (b)(2)(iii) to read as follows:

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

* * * * *

(b) * * *

(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.

* * * * *

(iii) Paragraph (b)(2)(i) of this section applies to distributions made on or after October 17, 2000. For distributions prior to October 17, 2000, §1.417(e)-1(b)(2)(i) in effect prior to October 17, 2000 (as contained in 26 CFR part 1 revised as of April 1, 2000) applies.

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PARTS 1 AND 31--[AMENDED]

Par. 7. 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	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.401(a)-20, Q&A-24, paragraph (a)(1), fourth sentence	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.401(a)(4)-4, paragraph (b)(2)(ii)(C)	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.401(a)(26)-4, paragraph (d)(2), last sentence	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.401(a)(26)-6, paragraph (c)(4), first sentence	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.411(a)-11, paragraph (b), first sentence	§1.411(a)-11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section
1.411(a)-11, paragraph (c)(7), third sentence	§1.411(a)-11T(c)(3)(ii)	paragraph (c)(3)(ii) of this section
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second, third, and fourth sentences	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
1.411(d)-4, Q&A-4, paragraph (a), eighth sentence	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)

1.417(e)-1, paragraph (b)(2)(i), first, fourth, and fifth sentences	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)
31.3121(b)(7)-2, paragraph (d)(2)(i), last sentence	§1.411(a)-11T(c)(3)(ii)	§1.411(a)-11(c)(3)(ii)

Deputy Commissioner of Internal Revenue

Approved:

Deputy Assistant Secretary of the Treasury (Tax Policy)