

contract is intended to be a QLAC and shall contain the following information—

(i) The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract;

(ii) The name, address, and identifying number of the individual in whose name the contract has been purchased;

(iii) If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification Number (EIN) of the plan sponsor;

(iv) If payments have not yet commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated;

(v) The amount of each premium paid for the contract, along with the date of the premium payment; and

(vi) Such other information as the Commissioner may require.

(b) *Manner and time for filing*—(1) *Initial disclosure*. The report required by paragraph (a)(2) of this section shall not be filed with the Internal Revenue Service.

(2) *Annual report*—(i) *Timing*. The report required by paragraph (a)(3) of this section shall be filed in accordance with the forms and instructions prescribed by the Commissioner. Such a report must be filed for each calendar year beginning with the year in which premiums for a contract are first paid and ending with the earlier of the year in which the individual in whose name the contract has been purchased attains age 85 (as adjusted pursuant to § 1.401(a)(9)-6, A-17(d)(3)(ii)) or dies.

(ii) *Surviving spouse*. If the individual dies and the sole beneficiary under the contract is the individual's spouse (in which case the spouse's annuity would not be required to commence until the individual would have attained age 85), the report must continue to be filed for each calendar year until the calendar year in which the distributions to the spouse commence or in which the spouse dies, if earlier.

(c) *Issuer statements*. (1) *Initial disclosure*. Each issuer required to make a report required by paragraph (a)(2) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information in the report. The statement shall be furnished at the time of purchase. The statement is not required to include information that the issuer has already provided to the

individual in order to comply with any applicable state disclosure law.

(2) *Annual report*. Each issuer required to file the report required by paragraph (a)(3) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information required to be furnished in the report, except that such statement shall be furnished to a surviving spouse to the extent that the report is required to be filed under paragraph (b)(2)(ii) of this section. A copy of the required form may be used to satisfy the statement requirement of this paragraph (c)(2). If a copy of the required form is not used to satisfy the statement requirement of this paragraph (c)(2), the statement shall contain the following language: "This information is being furnished to the Internal Revenue Service." The statement required by this paragraph (c)(2) shall be furnished on or before January 31 following the calendar year for which the report required by paragraph (a)(3) of this section is required.

(d) *Effective/applicability date*. This section applies on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-110980-10]

RIN 1545-BJ55

#### Modifications to Minimum Present Value Requirements for Partial Annuity Distribution Options Under Defined Benefit Pension Plans

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit plans to simplify the treatment of

certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form. These regulations would affect sponsors, administrators, participants, and beneficiaries of defined benefit pension plans. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by May 3, 2012. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2012, must be received by May 11, 2012.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-110980-10), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-110980-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-110980-10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Peter J. Marks or Linda S.F. Marshall at (202) 622-6090; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 401(a)(11) of the Internal Revenue Code (Code) provides that, in order for a defined benefit plan to qualify under section 401(a), and except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity. In the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a defined benefit plan must provide a qualified preretirement survivor annuity to the surviving spouse of such participant, except as provided under section 417.

Section 417(e)(1) provides that a plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if that present value does not exceed the amount that can be distributed without

the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of a qualified joint and survivor annuity or the qualified preretirement survivor annuity only if the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.<sup>1</sup>

Section 417(e)(3)(B) of the Code, as amended by section 302 of the Pension Protection Act of 2006 (PPA '06), Public Law 109-280, 120 Stat. 780 (2006), provides that the term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (3)(D)).

Section 417(e)(3)(C) of the Code, as amended by section 302 of PPA '06, provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) of the Code for the month before the date of the distribution or such other time as the Secretary may prescribe by regulations. Under section 417(e)(3)(D), these rates are to be determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D). Section 417(e)(3)(D) also provides special rules applicable for plan years beginning in 2008 through 2011 under which the applicable interest rate is based on a blend of the interest rates under section 417(e)(3)(C) and the previously applicable 30-year Treasury rate.

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan" is not treated as failing to meet the requirements of section 417(e) with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any

portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation. Section 411(a)(13)(C) defines the term "applicable defined benefit plan" to mean a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

Section 1107(a)(2) of PPA '06 provides that a pension plan does not fail to meet the requirements of section 411(d)(6) by reason of a plan amendment to which section 1107 applies, except as provided by the Secretary of the Treasury. Section 1107 of PPA '06 applies to plan amendments made pursuant to the provisions of PPA '06 or regulations issued thereunder that are adopted no later than a specified date, generally the last day of the first plan year beginning on or after January 1, 2009.

Final regulations under section 417 relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements were issued on August 22, 1988. The final regulations were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103-465 (GATT).

Section 1.417(e)-1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)-1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)-1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a qualified preretirement survivor annuity, 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 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction

of Social Security supplements or qualified disability benefits.

Notice 2007-81 2007-2 CB 899 (2007), (see § 601.601(d)(2)(ii)(b) of this chapter) provides guidance on the corporate bond yield curve and the segment rates used under section 430, as well as the interest rates for determining minimum present values under section 417(e)(3), to implement changes to the funding rules and minimum present value requirements made in PPA '06.

Rev. Rul. 2007-67 2007-2 CB 1047 (2007), (see § 601.601(d)(2)(ii)(b) of this chapter) provides that the applicable mortality table for a given year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year. Under Rev. Rul. 2007-67, the applicable mortality table for 2008 was based on a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates promulgated under § 1.430(h)(3)-1(c)(3) of the proposed regulations (which were later issued as final regulations). Rev. Rul. 2007-67 provides that updated section 417(e)(3) applicable mortality tables will be published for each calendar year in future guidance and, except as provided in that future guidance, will be determined from the section 430(h)(3)(A) tables on the same basis as the applicable mortality table for 2008.<sup>2</sup>

Rev. Rul. 2007-67 provides that an amendment to determine the applicable interest rate under the section 417(e)(3) rules in effect for plan years beginning on or after January 1, 2008, will not violate section 411(d)(6) solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the modified segment rates for the 30-year Treasury rate for the same period. Additionally, Rev. Rul. 2007-67 provides that a plan amendment to incorporate by reference the applicable mortality table under section 417(e)(3) that is prescribed by Rev. Rul. 2007-67 and by subsequent guidance will not violate section 411(d)(6) solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the

<sup>1</sup> Under section 411(a)(11)(B), the same actuarial assumptions are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

<sup>2</sup> Notice 2008-85, 2008-2 CB 905, sets forth the section 417(e)(3) applicable mortality tables for distributions with annuity starting dates that occur during stability periods that begin during calendar years 2009 through 2013.

applicable section 417(e)(3) mortality table for the prior applicable mortality table under section 417(e)(3).

Rev. Rul. 2007–67 also provides guidance regarding the applicable interest rate used under section 417(e)(3) pursuant to the PPA '06 changes. Pursuant to Rev. Rul. 2007–67, the rules of §§ 1.417(e)–1(d)(4) and 1.417(e)–1(d)(10)(ii) regarding the time for determining the applicable interest rate continue to apply for plan years beginning on or after January 1, 2008, without regard to the change in the basis for determining the applicable interest rate.

The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 109–280 (120 Stat. 780 (2008)), amended section 415(b)(2)(E)(v) to provide that the applicable mortality table under section 417(e)(3)(B) applies for purposes of adjusting a benefit or limitation pursuant to section 415(b)(2)(B), (C), or (D).

### Explanation of Provisions

#### *Treatment of Bifurcated Accrued Benefits*

These proposed regulations would amend the current final regulations under section 417(e) to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity that is excepted from the minimum present value requirements of section 417(e)(3) pursuant to § 1.417(e)–1(d)(6) and partly in a more accelerated form. Where a defined benefit plan offers a single-sum distribution or other form of accelerated distribution as an optional form of benefit in addition to the required qualified joint and survivor annuity, many participants have been reluctant to elect lifetime payments to insure against unexpected longevity, choosing instead an accelerated distribution form in order to maximize their liquidity. However, participants who elect a single sum or other accelerated form of distribution may face a greater challenge in protecting themselves against the risk of outliving their retirement savings.

The IRS and the Treasury Department believe that many participants would be better served by having the opportunity to elect to receive a portion of their retirement benefits in annuity form (which provides financial protection against unexpected longevity) while receiving accelerated payments for the remainder of the benefit to provide increased liquidity during retirement. Under current regulations, both portions of such a distribution option are subject to the minimum present value requirements of section 417(e)(3).

The proposed regulations would provide an exception to this rule in the case of a plan with a bifurcated accrued benefit as defined in the proposed regulations. Under this exception, such a plan is permitted to provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3). Thus, if this rule applies to treat two separate distribution options selected with respect to separate portions of a bifurcated accrued benefit as two separate optional forms of benefit, and one of those separate optional forms of benefit is exempt from the requirement to use the section 417(e)(3) assumptions, then that exemption would apply to that separate optional form of benefit. In such a case, the plan would have to apply the section 417(e)(3) assumptions only to the separate optional form of benefit that is not so exempted (rather than apply those assumptions to the entire optional form of benefit).

The primary impact of this proposed change would be to make it simpler and easier for a plan to offer an optional form of benefit that is a combination of a single-sum payment and an annuity. Allowing a plan to apply a bifurcated approach would permit the plan to use the section 417(e)(3) assumptions for the single-sum portion of the optional form and its usual annuity equivalence factors for the annuity portion (rather than being required to make a special calculation of the annuity portion using the section 417(e)(3) assumptions). Not only would this be simpler administratively, it would also yield a more intuitive result.

One type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides for two separate portions of the accrued benefit that are determined without regard to any election of optional form of benefit and permits a participant to choose different forms of benefit with respect to each of those portions of the accrued benefit. An example of such a plan is a plan that has been amended to accrue benefits under a different plan formula, where a participant's benefit is the sum of the participant's accrued benefit for years of service before the amendment date, determined under the pre-amendment plan terms, plus the participant's accrued benefit for years of service after the amendment date, determined under the post-amendment plan terms, with no interaction between the two formulas, and the plan permits

a participant to make separate elections of optional forms of benefit with respect to each of those portions of the accrued benefit.

A second type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides for a participant to apply different distribution elections to different portions of the accrued benefit so that the amount of the distribution, with respect to the distribution election applied to its respective portion of the accrued benefit, is the pro rata portion of the amount of the distribution that would be determined if that distribution election had been applied to the entire accrued benefit. An example of such a plan is a plan that provides both a single-sum option and a joint and survivor option for the entire benefit, but allows a participant to select an optional form which is 25 percent of the full lump sum and 75 percent of the full joint and survivor annuity.

A third type of plan with a bifurcated accrued benefit that would be eligible for this treatment is a plan that provides a single-sum distribution option with respect to only a portion of the benefit and provides a separate benefit election for the remainder of the distribution. In order to satisfy the requirements to be this type of plan with a bifurcated accrued benefit, the amount of the distribution that is not paid in a single sum must be no less than the amount that would be payable under the rules described in the prior paragraph had a single sum election been available with respect to the entire accrued benefit, where the single sum is determined as the present value of the accrued benefit payable at normal retirement age (or the immediate annuity if the participant is older than normal retirement age) determined using the applicable interest rates and the applicable mortality table. An example of such a plan is a plan that provides that a participant can elect to receive in a single sum an amount equal to the employee contributions, accumulated with interest, with the remainder of the accrued benefit paid under one of the annuity optional forms of benefit available under the plan in an amount sufficient to satisfy the requirements under the proposed regulations.

As previously discussed, the proposed regulations would make the bifurcation of benefits for purposes of section 417(e)(3) conditional on the existence of plan terms that explicitly provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated

as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3). To provide for such bifurcated treatment, a plan sponsor would be required to amend its plan to provide for use of the plan factors that generally apply to annuity distributions instead of the section 417(e)(3) assumptions in these circumstances. Any plan amendment must comply with the requirements of section 411(d)(6). See the discussion in this preamble under the heading "Effective/Applicability Date."

The Treasury Department and the IRS recognize that additional modifications to the regulations under section 417(e)(3) are needed in light of the enactment of PPA '06. It is expected that additional proposed amendments to the regulations under section 417(e)(3) will be issued to reflect statutory changes and to make other clarifications.

#### *Effective/Applicability Date*

These regulations are proposed to be effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

The changes under the proposed regulations are proposed to apply to distributions with annuity starting dates in plan years beginning after the publication date of final regulations. If the regulations are finalized as proposed and a plan that previously provided for a partial single-sum distribution together with a specified annuity distribution is amended to treat that distribution form as a bifurcated accrued benefit (and applies less favorable actuarial factors to the portion of the benefit that is not subject to section 417(e)(3)), then the plan must comply with the requirements of section 411(d)(6). This can be done by providing that, after the applicable amendment date under § 1.411(d)-3(g)(4), the amount of each portion of a distribution is not less than the amount that would have been payable under the plan provisions in effect before the amendment applied to the participant's accrued benefit as of the applicable amendment date.

#### **Special Analyses**

It has been determined that this notice of proposed rule making 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 proposed 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 Code, this notice of proposed rule making has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. In particular, the Treasury Department and the IRS request comments regarding whether the special rules in these proposed regulations regarding bifurcated accrued benefits should be extended to any types of benefits that are not covered by the rules in these proposed regulations. All comments will be available for public inspection or copying at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing has been scheduled for June 1, 2012, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by May 3, 2012, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by May 11, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal authors of these regulations are Peter J. Marks and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax

Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

#### **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 continues to read in part as follows:

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

**Par. 2.** Section 1.417(e)-1 is amended by:

1. Redesignating paragraph (d)(1) as newly designated paragraph (d)(1)(i) and revising the heading of the newly designated paragraph (d)(1)(i).
2. Adding a new paragraph (d)(1)(ii).
3. Revising paragraphs (d)(7) and (d)(8)(i).
4. Adding a new paragraph (d)(8)(v).

The additions and revisions read as follows:

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

\* \* \* \* \*

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans.*

\* \* \*

(ii) *Defined contribution plans.* Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

\* \* \* \* \*

(7) *Permitted bifurcation of certain optional forms of benefit*—(i) *General rule.* A plan with a bifurcated accrued benefit (as described in paragraph (d)(7)(ii) of this section) is permitted to provide that, if a participant selects two different distribution options with respect to separate portions of the bifurcated accrued benefit, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d). Thus, if this paragraph (d)(7) applies to treat two separate distribution options selected with respect to separate portions of a bifurcated accrued benefit as two separate optional forms of benefit, and

the exception from the application of paragraph (d) of this section that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the optional form of benefit to which the exception under paragraph (d)(6) of this section does not apply.

(ii) *Bifurcated accrued benefit*—(A) *In general*. A plan provides a bifurcated accrued benefit within the meaning of this paragraph (d)(7)(ii) if the plan satisfies the requirements of paragraph (d)(7)(iii) of this section (relating to separately determined benefits), (d)(7)(iv) of this section (relating to separate distribution options for proportionate benefits), or (d)(7)(v) of this section (relating to single sum with separate distribution option for remainder).

(B) *Rules of operation*. If a plan provides a bifurcated accrued benefit within the meaning of this paragraph (d)(7)(ii), and one portion of the benefits under the plan would itself be a bifurcated accrued benefit if it were the entire accrued benefit, then the rules of paragraph (d)(7)(i) of this section may be re-applied to such portion.

(iii) *Separately determined benefits*. A plan satisfies the requirements of this paragraph (d)(7)(iii) if the plan provides for two separate portions of the accrued benefit that are determined without regard to any election of optional form of benefit and permits a participant to select different distribution options with respect to each of those portions of the accrued benefit.

(iv) *Separate elections for proportionate benefits*. A plan satisfies the requirements of this paragraph (d)(7)(iv) if—

(A) The plan provides for a participant to select one distribution option with respect to a portion of the accrued benefit and a different distribution option with respect to the remaining portion of the accrued benefit;

(B) The distribution option selected with respect to each of the separate portions of the accrued benefit is available with respect to the entire accrued benefit; and

(C) The amount of the distribution with respect to each distribution option applied to its respective portion of the accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit.

(v) *Single sum with separate election for remainder*. A plan satisfies the requirements of this paragraph (d)(7)(v) if—

(A) The plan provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan;

(B) A single-sum distribution is not available with respect to the participant's entire accrued benefit; and

(C) The amount of the distribution that is not paid in a single sum is not less than the amount that would be payable if—

(1) A single sum election were available with respect to the entire accrued benefit, where the single sum is the present value of the accrued benefit payable at normal retirement age (or the immediate annuity if the participant is older than normal retirement age) determined using the applicable interest rates and the applicable mortality table;

(2) The participant elected to receive the specified amount in a single sum; and

(3) The rules of paragraph (d)(7)(iv) of this section were applied to determine the amount of the distribution that is not paid in a single sum.

(vi) *Examples*. The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: Each plan is a single-employer defined benefit plan with a calendar-year plan year, a one-year stability period coinciding with the calendar year, and a one-month lookback used for determining the applicable interest rate. The normal retirement age is 65, and all participant elections are made with proper spousal consent. In addition, these examples reflect the amendments to sections 417 and 411 that were made in the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006).

*Example 1.* (i) Plan B offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan B permits a participant to elect to receive a percentage of the accrued benefit chosen by the participant as a single sum and the remainder in any annuity form provided under the plan, with both portions of the payment determined by multiplying the amount that would be payable if the entire benefit were paid in that form by the percentage that applies to that distribution option. Plan B provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an

annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Assume that the December 2012 segment rates are 3.21%, 5.19% and 5.67% for purposes of this example.

(ii) Participant S retires at age 62 in 2013, with an accrued benefit of \$1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of \$1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of \$153,852 (based on the applicable interest rate and mortality table under section 417(e), which are the 2013 applicable mortality table and the December 2012 segment rates), or a 100% joint and survivor annuity of \$850 per month (based on the plan's annuity conversion factors). Participant S elects to receive 25% of the benefit in the form of a single-sum payment and the balance as a 100% joint and survivor annuity.

(iii) In accordance with paragraph (d)(7)(iv) of this section, Plan B provides for a bifurcated accrued benefit because Plan B provides for a participant to select a single-sum distribution with respect to a portion of the accrued benefit and an annuity distribution option with respect to the remaining portion of the accrued benefit. Each distribution option is available with respect to the entire accrued benefit, and the amount of the distribution with respect to each distribution option applied to its respective portion of the accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit. Furthermore, Plan B provides that the two different distribution options selected with respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan B implementing the requirements of section 417(e)(3) and § 1.417(e)–1(d). Accordingly, Participant S receives a single sum payment equal to 25% of the full single sum amount, or \$38,463. In addition, Participant S receives a 100% joint and survivor annuity in the amount of \$637.50 per month, equal to 75% of the full joint and survivor benefit of \$850 per month otherwise payable. The joint and survivor benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

*Example 2.* (i) Plan C permits participants to elect a partial single sum equal to employee contributions, accumulated with interest. Any other amounts must be paid in the form of an annuity. Under the terms of Plan C, if a participant elects to receive this partial single sum, the annuity benefit payable to the participant is at least as great as the minimum amount determined pursuant to paragraph (d)(7)(v)(C) of this section. Plan C provides that, with respect to a distribution that is paid partly in the form

of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Participant T retires at age 60 in 2013 with an accrued benefit of \$1,500 per month payable as a straight life annuity payable at normal retirement age. Based on the plan's early retirement and optional form factors (which are not based on the applicable interest and mortality rates under section 417(e)(3)), Participant T's benefit commencing at age 60 in the form of a 10-year certain and continuous annuity would be \$925 per month. Participant T elects to receive a single sum payment of \$32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and continuous annuity. Assume that the December 2012 segment rates are the same as those assumed in *Example 1*. Based on the applicable mortality table for 2013 and the December 2012 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 is 8.769.

(ii) In accordance with paragraph (d)(7)(v) of this section, Plan C provides for a bifurcated accrued benefit because Plan C provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan, a single-sum distribution is not available with respect to a participant's entire accrued benefit, and the amount of the distribution that is not paid in a single sum meets the requirements of paragraph (d)(7)(v)(C) of this section. Furthermore, Plan C provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Accordingly, the rule for proportional benefits under paragraph (d)(7)(iv) of this section is applied to determine the minimum amount of Participant T's annuity as if a single sum payment were available, equal to the present value of T's full accrued benefit. If Plan C had offered a single sum payment option with respect to Participant T's full accrued benefit of \$1,500 per month, the minimum present value based on the applicable mortality table for 2013 and the assumed December 2012 segment rates would have been  $\$1,500 \times 12 \times$  the deferred annuity factor of 8.769, or \$157,842. The single sum payment actually available to Participant T under the provisions of Plan C is the amount of accumulated contributions with interest, or \$32,000 which represents 20.27% of the single sum value of Participant T's full accrued benefit ( $\$32,000 \div \$157,842 = 20.27\%$ ).

(iii) Therefore, the portion of T's accrued benefit not payable as a single sum must be at least as great as the amount based on the remaining 79.73% of T's benefit multiplied by the accrued benefit of \$1,500 per month, or \$1,195.95 per month payable at normal retirement age. Based on Plan C's early

retirement and optional form factors, the annuity benefit payable to Participant T in the form of a 10-year certain and continuous annuity beginning at age 60 cannot be less than \$925 times 79.73% or \$737.50 per month. Participant T receives this in addition to the single sum payment of \$32,000. The 10-year certain and continuous benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

*Example 3.* (i) Plan D permits participants to elect a single-sum payment of up to \$10,000 with the remaining benefit payable in the form of an annuity. Under the terms of Plan D, if a participant elects to receive this partial single sum, the annuity benefit payable to the participant is at least as great as the minimum amount determined pursuant to paragraph (d)(7)(v)(C) of this section. Plan D provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Participant W retires in 2013 at age 55 with an accrued benefit of \$1,000 per month payable at normal retirement age. Participant W is eligible for an unreduced early retirement benefit of \$1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant W can receive an immediate benefit in the form of a 100% joint-and-survivor annuity of \$800 per month. Participant W elects to receive a single sum payment of \$10,000, with the balance of the benefit payable as a 100% joint-and-survivor annuity beginning at age 55. Assume that the December 2012 segment rates are the same as those assumed in *Example 1*. Based on the applicable mortality table for 2013 and the December 2012 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 6.558.

(ii) In accordance with paragraph (d)(7)(v) of this section, Plan D provides for a bifurcated accrued benefit because Plan D provides for a specified amount to be distributed in a single sum, with the remainder distributed as another distribution option payable under the plan, a single-sum distribution is not available with respect to a participant's entire accrued benefit, and the amount of the distribution that is not paid in a single sum meets the requirements of paragraph (d)(7)(v)(C) of this section.

Furthermore, Plan D provides that, with respect to a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Accordingly, the rule for proportional benefits under paragraph (d)(7)(iv) of this section is applied to

determine the minimum amount of Participant W's annuity as if a single sum payment were available, equal to the present value of W's full accrued benefit.

(iii) If Plan D had offered a single sum payment option with respect to Participant W's full accrued benefit of \$1,000 per month, the minimum present value based on the applicable mortality table for 2013 and the assumed December 2012 segment rates would have been  $\$1,000 \times 12 \times$  the deferred annuity factor of 6.558, or \$78,696. The single sum payment actually available to Participant W under the provisions of Plan D is \$10,000, which represents 12.71% of the single sum value of W's full accrued benefit ( $\$10,000 \div \$78,696 = 12.71\%$ ).

(iv) Therefore, the portion of Participant W's accrued benefit not payable as a single sum must be at least as great as the amount based on the remaining 87.29% of W's benefit multiplied by the accrued benefit of \$1,000 per month, or \$872.90 per month payable at normal retirement age. Based on Plan D's early retirement and optional form factors, the annuity benefit payable to Participant W in the form of a 100% joint-and-survivor annuity beginning at age 55 is no less than  $87.29\% \times \$800$ , or \$698.32 per month. Participant W receives this in addition to the single sum payment of \$10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(i) of this section.

*Example 4.* (i) Plan E was amended to freeze benefits under the traditional plan formula as of December 31, 2012, and to provide benefits under a cash balance formula beginning January 1, 2013. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2012, and the portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula. Plan E provides that the two distribution options selected with respect to the portion of the benefit accrued under the traditional formula as of December 31, 2012, and the portion of the benefit earned under the cash balance formula are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d).

(ii) In accordance with paragraph (d)(7)(iii) of this section, Plan E provides for a bifurcated accrued benefit because the portion of the accrued benefit determined under the traditional formula and the portion of the accrued benefit determined under the cash balance formula are determined separately without regard to any election of optional form of benefit and Plan E permits a participant to select different distribution options with respect to both of those portions of the accrued benefit. Furthermore, as permitted by paragraph (d)(7)(i) of this section, Plan E provides that the two different distribution options selected with

respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Therefore, whether a participant elects to receive a single sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2012, is subject to the minimum present value requirements of section 417(e)(3).

*Example 5.* (i) The facts are the same as in *Example 4*, except that Plan E also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of the accrued benefit chosen by the participant as a single sum and the remainder in any annuity form provided under the plan, with both portions of the payment determined by multiplying the amount that would be payable if the entire benefit were paid in that form by the percentage that applies to that distribution option. Plan E provides that, with respect to such a distribution that is paid partly in the form of a single sum and partly in the form of an annuity, the single sum and the annuity are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Participant X retires at age 65, with an accrued benefit under the traditional formula of \$500 per month (earned as of December 31, 2012), and a cash balance hypothetical account of \$45,000. Based on Plan E's actuarial equivalence factors, Participant X's accrued benefit derived from the cash balance hypothetical account is \$320 per month, payable as a life annuity at normal retirement. Participant V elects to receive \$15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a life annuity.

(ii) Under the analysis set forth in *Example 4*, Plan E provides for a bifurcated accrued benefit in accordance with paragraph (d)(7)(C) of this section with respect to the portion of the accrued benefit attributable to the benefit accrued as of December 31, 2012, and the portion of the accrued benefit attributable to the benefit earned under the cash balance formula. Furthermore, Plan E provides that the two different distribution options selected with respect to each of those portions of the accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii) In accordance with paragraphs (d)(7)(ii)(B) and (d)(7)(iv) of this section, the portion of the accrued benefit under Plan E earned under the cash balance formula is also a bifurcated accrued benefit because Plan E provides for a participant to select a single-sum distribution with respect to a portion of the cash balance formula accrued benefit and an annuity distribution option with respect

to the remaining portion of the cash balance formula accrued benefit, each distribution option is available with respect to the entire cash balance formula accrued benefit, and the amount of the distribution with respect to each distribution option applied to its respective portion of the cash balance formula accrued benefit is the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire cash balance formula accrued benefit. Furthermore, Plan E provides that the two different distribution options selected with respect to each of those portions of the cash balance formula accrued benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of Plan E implementing the requirements of section 417(e)(3) and § 1.417(e)-1(d). Thus, under paragraph (d)(7)(iv) of this section,  $\frac{1}{3}$  of the cash balance hypothetical account is paid as a single sum (that is,  $\$15,000 \div \$45,000$ ), and the remaining  $\frac{2}{3}$  of the cash balance hypothetical account, or \$30,000, is converted to an annuity benefit of  $\frac{2}{3} \times \$320$ , or \$213.33 per month.

(iv) Participant X therefore receives a single sum payment of \$15,000, representing the portion of the current hypothetical account balance that X elected to receive as a single sum. In addition, Participant X receives a monthly life annuity of \$713.33 per month (equal to the \$500 benefit attributable to the benefit earned as of December 31, 2012, plus the \$213.33 portion of the cash balance benefit paid as an annuity). Participant X's election to receive a single sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant X's distribution is subject to the minimum present value requirements of section 417(e)(3).

(8) *Effective/applicability date*—(i) *In general.* Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 1995.

\* \* \* \* \*

(v) Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after the date final regulations that finalize these proposed regulations are published in the **Federal Register**.

\* \* \* \* \*

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2012-2341 Filed 2-2-12; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

#### 27 CFR Part 478

[Docket No. ATF 32P; AG Order No. 3321-2012]

RIN 1140-AA38

#### Federal Firearms License Proceedings—Hearings (2008R-15P)

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice is proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding administrative hearings held as part of firearms license proceedings. This proposed rule clarifies that such hearings are held in an informal setting and that persons requesting a hearing will be afforded the opportunity to submit facts, arguments, offers of settlement, or proposals of adjustment for review and consideration. The proposed regulations are intended to ensure that federal firearms licensees and persons applying for a federal firearms license are familiar with the hearing process relative to the denial, suspension, or revocation of a firearms license, or imposition of a civil fine.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before May 3, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** Send comments to any of the following addresses—

- Deborah G. Szczenski, Industry Operations Specialist (Regulations), Mailstop 6N-602, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; *Attn:* ATF 32P. Written comments must appear in a minimum 12-point size of type (.17 inches), include your mailing address, be signed, and may be of any length.

- (202) 648-9741 (facsimile).
- <http://www.regulations.gov>. Federal eRulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this proposed rule at the <http://www.regulations.gov> site.

See the Public Participation section at the end of the **SUPPLEMENTARY**