

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 411.—Minimum Vesting Standards

26 CFR 1.411(a)–7T: Definitions and special rules (temporary).

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

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 REG–113694–98, page 56 in this Bulletin.

DATES: *Effective Date:* These regulations are effective December 31, 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 §1.411(a)–11T(c)(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 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, §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.

In addition, these temporary regulations eliminate, for many distributions, the lookback rule under §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 participation 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 §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 §§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 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 §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: §§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 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.

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 regulations 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.

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 Amendment 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 §1.411(a)–7T and revising the entry for §1.411(d)–4 to read as follows:

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

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

§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:

§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 §1.411(a)–7T.)

* * * * *

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

§1.411(a)–7T Definitions and special rules (temporary).

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

(d)(4) Certain cash-outs of accrued benefits—(1) 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 §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 §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 §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 §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 §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.

(d)(5) and (6) [Reserved]. For further guidance, see §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:

§1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) ***

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

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

§1.411(a)–11T Restriction and valuation of distributions (temporary).

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

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

(2) Consent. [Reserved]. For further guidance, see §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 §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

(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 distribu-

tions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see §1.11(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 §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 §1.411(a)-11T(c)(3)(ii)
1.401(a)-20, Q&A-24, paragraph (a)(1), fourth sentence	\$3,500	the cash-out limit in effect under §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 §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 §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 §1.411(a)-11T(c)(3)(ii)
1.411(a)-11, paragraph (b), first sentence	\$3,500	the cash-out limit in effect under §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 §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 §1.411(a)-11T(c)(3)(ii)
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 §1.411(a)-11T(c)(3)(ii)

1.411(d)–4, Q&A-4, paragraph (a), last sentence in the parenthetical	§1.401(a)–4 Q&A-4	§1.401(a)(4)–4(b)(2)(ii)(C)
1.417(e)–1, paragraph (b)(2)(i), first, fourth, and fifth sentences	\$3,500	the cash-out limit in effect under §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 §1.411(a)–11T(c)(3)(ii) of this chapter

David A. Mader,
*Acting Deputy Commissioner
of Internal Revenue.*

Approved November 18, 1998.

Donald C. Lubick,
*Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 F.R. 70335)