

## **Amendment of Qualified Plans for Final Regulations Under § 411(d)(6)**

### **Announcement 2000–71**

Final regulations under § 411(d)(6) of the Code were published in the Federal Register on September 6, 2000. The regulations grant relief under § 411(d)(6) by permitting qualified defined contribution plans to be amended, under certain conditions, to eliminate some alternative forms of payment and to eliminate or limit the right to receive certain in-kind distributions. The final regulations also permit certain transfers between plans that were not previously permitted. The regulations generally apply to amendments adopted, and transfers made, on or after September 6, 2000.

Effective September 6, 2000, plan sponsors may adopt plan amendments that are permitted under the final regulations under § 411(d)(6). Determination letters that are issued with respect to plans for which an application is filed with the Service on or after September 6, 2000, may be relied upon with respect to whether a plan satisfies the requirements of the final regulations.

Some plans might contain language that would necessitate a change to conform to the final regulations (as described below). Such a plan must be amended, in connection with its application for a determination letter, to satisfy the final regulations. See below regarding the effective date of the amendment.

Plan sponsors that have determination letter applications on file with the Service which were submitted before September 6, 2000, should contact the Ser-

vice if they wish to amend their plans and have the provisions of the final regulations taken into account in their determination letters. Plan sponsors should contact the EP specialist who has been assigned to review their application, if possible. Otherwise, they should contact Customer Service at 1-877-829-5500. In these cases, the Service will try to accommodate the plan sponsor's request to have the provisions of the final regulations taken into account in the determination letter. However, if the EP specialist assigned to review the application has already completed that review, the Service will not be able to accommodate the plan sponsor's request and a new application and user fee will be required.

In general, the final regulations expand the permitted changes that may be made to alternative forms of payment and in-kind distributions under a defined contribution plan and, in the case of voluntary direct transfers between plans, the circumstances under which elimination of optional forms of benefit is permitted. Generally, therefore, plan sponsors may choose to amend their plans as a result of these changes, but are not required to do so, except as provided below.

The regulations under § 411(d)(6), as in effect prior to September 6, 2000, ("the 1988 regulations") permitted elimination of optional forms of benefit in connection with voluntary direct transfers between plans, provided certain requirements were satisfied. Section 401(a)(31), which was added after the 1988 regulations, requires that participants be able to elect a direct rollover to an IRA or other eligible retirement plan of any eligible rollover distribution. Because the requirements of § 411(d)(6) do not apply to amounts distributed, including those amounts directly rolled over under § 401(a)(31), the voluntary direct transfer rules in the 1988 regulations produce the same § 411(d)(6) result with respect to an eligible rollover distribution as a direct rollover under § 401(a)(31).

The final regulations under § 411(d)(6) generally eliminate this duplication. The final regulations provide, in part, that relief from the requirements of § 411(d)(6) is not available under the voluntary transfer rules where the participant is entitled to elect a § 401(a)(31) direct rollover because the

participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of § 401(a)(31)(C). This provision of the final regulations is effective for transfers occurring on or after January 1, 2002.

Some plans might contain pre-existing provisions that permit elimination of optional forms of benefit pursuant to the voluntary direct transfer rules as in effect under the 1988 regulations. To the extent that these plan provisions are inconsistent with the final regulations under § 411(d)(6), as described in the preceding paragraph, the plan must be amended. The amended plan must provide that the benefit of a participant described in the preceding paragraph may be voluntarily transferred only through a § 401(a)(31) direct rollover.

Any plan amendment required to conform the plan terms to the final § 411(d)(6) regulations does not have to be adopted prior to the end of the plan's GUST remedial amendment period, as described in Rev. Proc. 2000–27, 2000–26 I.R.B. 1272, and Rev. Proc. 2000–20, 2000–6 I.R.B. 553. However, as provided above, if a determination letter application for the plan is filed on or after September 6, 2000, the required plan amendment must be adopted in connection with the application. In any case, the plan amendment must be effective no later than January 1, 2002.