

## Extension of Effective Date of Relative Value Regulations

### Announcement 2004–58

The Department of the Treasury and the Internal Revenue Service announce a delay in the effective date of § 1.417(a)(3)–1 of the Income Tax Regulations with respect to qualified joint and survivor (QJSA) explanations relating to certain optional forms of benefit. However, the current effective date of the regulations is retained with respect to QJSA explanations relating to single sum or other optional forms of benefit subject to § 417(e)(3) of the Internal Revenue Code that are less valuable than the QJSA.

Section 1.417(a)(3)–1 requires the disclosure, as part of a QJSA explanation, of the relative value and financial effect of optional forms of benefit available to participants in retirement plans qualified under § 401(a) of the Internal Revenue Code. This announcement also addresses certain questions that have arisen under these regulations.

#### *Extension of Effective Date*

Final regulations (T.D. 9099, 2004–2 I.R.B. 255) under § 417(a)(3) of the Code regarding disclosure of the relative value and financial effect of optional forms of benefit as part of QJSA explanations provided to participants receiving qualified retirement plan distributions were published in the Federal Register on December 17, 2003. See § 1.417(a)(3)–1 of the regulations, 68 FR 70141. The final regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after October 1, 2004.

The regulations were issued in response to concerns that, in certain cases, the information provided to participants under § 417(a)(3) regarding available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving explanations that do not adequately explain the value of the subsidy

that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of the annuity payments would not adequately enable a participant to make an informed comparison of the relative values of those distribution forms. The regulations address this problem, as well as the problem of disclosure in other cases where there are significant differences in value among optional forms, and also clarify the rules regarding the disclosure of the financial effect of benefit payments.

A number of commentators have requested that the effective date of the regulations be postponed. Among the reasons cited is the need in some plans for sponsors to complete an extensive review and analysis of optional forms of benefit in order to prepare proper comparisons of the relative values of those optional forms to the QJSA. They have noted that recently proposed regulations (REG–128309–03, 2004–16 I.R.B. 800) under § 411(d)(6) would permit elimination of certain optional forms of benefit and that many plan sponsors can be expected to engage in a thorough review of all of the optional forms of benefit under their plans following publication of those regulations in final form. See § 1.411(d)–3 of the regulations, 69 FR 13769 (March 24, 2004). These commentators have argued that it would be inefficient for plans to be required to incur the costs of two such extensive analyses in succession, rather than a single analysis of optional forms that might serve to some extent for purposes of both the relative value regulations and the § 411(d)(6) regulations.

After careful consideration of these comments, Treasury and the IRS are postponing the effective date of the final regulations under § 1.417(a)(3)–1 for certain QJSA explanations. The regulations will generally be effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. In the interim, plans that do not comply with § 1.417(a)(3)–1 will be required to comply with prior guidance regarding disclosure of relative value and financial effect. See §§ 1.401(a)–11(c)(3) and 1.401(a)–20, Q&A–36 as they ap-

peared in the April 1, 2003, edition of the Code of Federal Regulations.

Notwithstanding this extension, the existing effective date under § 1.417(a)(3)–1 of the regulations is retained for explanations with respect to any optional form of benefit that is subject to the requirements of § 417(e)(3) of the Code (*e.g.*, single sums, distributions in the form of partial single sums in combination with annuities, or installment payment options) if the actuarial present value of that optional form is less than the actuarial present value (as determined under § 417(e)(3)) of the QJSA. Thus, for example, a QJSA explanation provided with respect to an annuity starting date beginning on or after October 1, 2004, must comply with § 1.417(a)(3)–1 to the extent that the plan provides for payment to that participant in the form of a single sum that is less valuable than the QJSA.

#### *Reasonable Estimates for Generalized Notice*

The final regulations provide two methods for disclosing the relative value and financial effect of the optional forms of benefit presently available to a participant: the “participant-specific” method of § 1.417(a)(3)–1(c) and the “generalized notice” method of § 1.417(a)(3)–1(d). Under the participant-specific method, a plan must provide information on the relative value and financial effect of each optional form of benefit and is permitted to use reasonable estimates for this purpose (*e.g.*, estimates based on data as of an earlier date, a reasonable assumption of the spouse’s age, or reasonable estimates of the applicable interest rate under § 417(e)(3)).

Under the generalized notice method, a plan discloses the amount of the participant’s benefit payable in the normal form of benefit and provides additional information that is not participant-specific (although participant-specific information must be provided upon request). The additional information may be disclosed in the form of a chart based on computations for hypothetical participants that shows the financial effect of generally available optional forms of benefit in units such as dollars per thousand, and the relative value of those optional forms. The disclosure of

the amount of the individual participant's benefit in combination with the chart allows the individual to estimate the financial effect and relative value of the optional forms of benefit available to that individual.

In response to questions raised, this announcement clarifies that reasonable estimates may be used in determining the amount of the normal form of benefit available to a participant under the generalized notice method of disclosure. In addition, a plan may choose to base the chart or additional information described above in part on participant-specific data so long as the requirements of the generalized notice method are otherwise satisfied.

### *QJSA as Most Valuable Optional Form of Benefit*

Section 1.401(a)-20, Q&A-16, provides that, in the case of a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. Section 417(e)(3) provides that specified mortality and interest rate assumptions apply in determining the minimum present value of certain optional forms of benefit, such as a single sum. Some commentators have expressed concern that, solely as a result of the use of the actuarial assumptions specified in § 417(e)(3), the value of a single-sum distribution may exceed the actuarial present value of a QJSA, especially at younger ages.

The Treasury and the Service intend to issue regulations, effective retroactively, clarifying the interaction between the QJSA requirements and the requirements of § 417(e)(3) to use specified actuarial assumptions. The regulations are expected to provide that a plan will not fail to satisfy the requirements of § 417 merely because the application of § 417(e)(3) causes an optional form of benefit to be more valuable than the QJSA.

### *Contact Information*

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