February 23, 2017

CC:PA:LPD:PR (REG-107424-12)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Proposed Update to Minimum Present Value Requirements for Defined Benefit Plan Distributions [REG-107424-12]
RIN 1545-BK95

Dear Sir or Madam:

The ASPPA College of Pension Actuaries (ACOPA) is submitting this letter in response to the request for comments on the proposed Update to Minimum Present Value requirements for Defined Benefit Plan Distributions [REG-107424-12].

ACOPA is part of the American Retirement Association. The American Retirement Association is a national organization of more than 20,000 retirement plan professionals who provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. All credentialed actuarial members of the American Retirement Association are members of ACOPA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Summary

The proposed update to the §417(e) regulations appears to require the use of a pre-retirement mortality assumption for §417(e) purposes. Many plans, especially small plans, do not use a pre-retirement mortality assumption to determine present values. Under current guidance, the present values determined with no pre-retirement mortality satisfy the § 417(e) requirements where other guidance references § 417(e) applicable mortality. An update to the § 417(e) regulations should make it clear that a plan that provides for no pre-retirement mortality in determining minimum present values is considered to be using § 417(e) applicable mortality rates for those determinations. In addition, the proposed update's approach to application of § 417(e) to Social Security Level Income (SSLI) options could lead to unreasonable outcomes. The proposal should be revised to make bifurcation available to SSLI options with rules similar to those available for partial lump sum payments under § 1.417(e)-1(d)(7).

Discussion

1. Use of pre-retirement mortality in determining the § 417(e) minimum present value.

ACOPA recommends that the regulation specifically allow a plan to calculate the § 417(e) minimum either with or without pre-retirement mortality, or by explicitly including the value of the death benefit in the calculation. The methodology for determining the § 417(e) minimum should be specified in plan terms, and the resulting amount considered the § 417(e) minimum for all purposes, such as the most valuable exception described in § 1.401(a)-20 Q&A 16, application of substitution of annuity rule for §1. 430(d)-1(f)(4)(iii)(B), and the mandatory distribution threshold of § 411(a)(11).

§ 1.401(a)-20 Q&A-16 states that "…417(e) is calculated using the applicable interest rate (and for periods when required, the applicable mortality table) under 417(e)(3)". The proposed regulatory language appears to require the use of the applicable mortality table for both pre and post retirement purposes, and precludes a plan that does not use a pre-retirement mortality assumption from accessing this exception to the most valuable benefit rule. If the requirement that the § 417(e) minimum be calculated using pre-retirement mortality is retained in the final rule, the most valuable benefit exception in § 1.401(a)-20 Q&A-16 should be modified to clarify that the exception is available even if the plan includes the present value of the death benefit in the lump sum, either directly or through not applying pre-retirement mortality rates.

If pre-retirement mortality is to be required for the QJSA most valuable exception, § 411(d)(6) anticutback relief should be provided to permit pre-retirement mortality to be incorporated into the minimum present value determination.

If the final update to the regulation does not make it clear that a calculation that reflects the value of pre-retirement death benefits is an acceptable approach to determining the minimum present value, practitioners will be concerned about the potential impact of the Service's position on other present value based determinations such as the required post-NRA adjustments in the § 411 regulations. If this approach to recognition of the value of pre-retirement death benefits were extended to a § 411 analysis for late retirement adjustments, for instance, plans would be required to provide an actuarial adjustment reflecting both interest and mortality decrements, regardless of the death benefit provided by the plan (other than the exceptions for employee-provided benefits and for suspension of benefits plans). We recognize that the proposed regulation does not address this area directly. If this is the IRS' interpretation of present value for all purposes, rather than simply the minimum present value allowable, we assume that such a dramatic change would be approached through a proposed amendment to § 411 regulations. Such a proposed amendment would, by necessity, have to look at all the impacts of a change to the methodologies for determining present values and its implications throughout the Code and regulations, especially in areas such as §§ 401, 411, 415 and 416.

2. Transition rule for older applicable rates.

ACOPA recommends that this update of the § 417(e) guidance be expanded to include incorporation of transition rules for pre-PPA § 417(e) rates into the §1.401(a)-20 Q&A#16. Notice 2008-30 Q&A #16 provided some relief on the most valuable rule for plans continuing to use the pre-PPA § 417(e) rates. That Notice indicated that "it is anticipated that 1.401(a)-20, Q&A #16 will be amended to reflect this special treatment." Unfortunately, there is some confusion as to the applicability of the transition relief provided in the 2008 notice. Given that it relates to § 417(e) rates, it would seem to be appropriate to include a §1.401(a)-20 Q&A#16 modification in the final rule.

The confusion with Notice 2008-30 Q&A #16 relates to the timeframe for the exception. The language was somewhat unclear as to whether the intent was that the exception expire at the end of the § 1107(b)(2)(A) period – or if it was only required that the amendment be adopted by the end of the § 1107(b)(2)(A) period but the special treatment then be permanent. If the exception was to expire, employers would have been forced to amend plans to significantly reduce lump sums for many lower-paid young NHCEs, which was presumably not the intention. Clear guidance is needed on the applicability of this exception. If the intent was to have the special treatment expire, guidance should provide a prospective expiration date that is the effective date of the change in the § 1.401(a)-20 regulation, rather than as of the end of the § 1107(b)(2)(A) period. Some practitioners have believed, in good faith, that this was not the meaning of Notice 2008-30. The same treatment should be made explicit for the change in § 417(e) rates that occurred in 1995. Some plans are still grandfathering the pre-1995 rates in good faith.

While revising the exception in the § 1.401(a)-20 Q&A, the Service should consider adding a similar exception for paying a lump sum equal to a cash balance benefit, or state conditions that would apply if a different rule is determined to be relevant.

3. Implicit bifurcation of the temporary and permanent annuities for SSLI options.

ACOPA recommends that the regulation be modified to allow bifurcation for SSLI options similar to the approach permitted for partial lump sum payments under § 1.417(e)-1(d)(7). The SSLI example in proposed §1.417(e)-1(d)(6)(ii) determines the minimum temporary and deferred annuity payments without regard to the plan's early retirement factors. The result is effectively requiring a plan subsidy for early retirement SSLI benefits that would not be required if a participant were permitted to take a partial lump sum payment equivalent in value to the temporary SSLI increase in payments. In the example in the regulations, if a lump sum option were available, and the participant elected to take a partial lump sum of $57,024 ($1,000 x 4.752 x 12), the remaining accrued benefit payable at age 65 would be $2,000 x (1-57,024/262,344) = $1,565.27. The plan's early retirement factors would then be applied, resulting in an immediate lifetime annuity of $1,017.43 ($1,565.27 x $1,300/$2,000).

The proposed regulation's approach can result in unreasonable outcomes if a plans early retirement reduction factor is significantly higher than the § 417(e) actuarial equivalent reduction. For example, if the early retirement benefit payable in the example in the

proposed regulation was $1,000 per month, electing the SSLI option would allow a participant to collect $1,000 per month for 5 years in addition to $1,090.99 per month for life – a $90.99 per month bump in lifetime benefits in addition to the $1,000 per month for five years that "levels" the benefit. Providing for bifurcation would produce a more reasonable result of $782.14 ($1565.27*$1,000/$2,000).

In recognition of the long-standing debate on applicability of § 417(e) to SSLI options, and the delay in providing concrete guidance to dispel that controversy, final regulations should provide transition relief to avoid recalculation of scores of previously determined benefits. The final rule should not require any benefit in pay status to be revised.

4. § 417(e) and early retirement benefits

Comments were requested on whether the present value of the annuity payable at normal retirement age using § 417(e) rates is sufficient to assure the protections mandated by § 417 in situations where the plan provides the present value of a subsidized early retirement benefit at plan rates, if greater. ACOPA considers this to be an example of "no good deed goes unpunished". The plan is not required to offer the value of the immediate benefit at all, so there is no purpose under § 417 that would be served by mandating the use of § 417(e) rates on the subsidy. ***ACOPA recommends*** that the final rule clarify that the § 417(e) minimum is the present value of the annuity payable at normal retirement age using § 417(e) rates. Given that guidance has been provided to the effect that the current regulation requires the § 417 calculation on the subsidized early benefit, anticutback relief should be provided to smooth administration.

5. **Additional § 417 guidance.**

ACOPA recommends that other open questions on the application of the § 417(e) rates be addressed in the final regulation. Examples would be how to apply the segment rates for rehire offsets and for adjustments to retroactive payments under the RASD rules.

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These comments were prepared by the ACOPA Government Affairs Committee. Please contact Judy A. Miller, MSPA, ACOPA Executive Director at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/
Judy A. Miller, MSPA
Executive Director
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/s/
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