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Model Amendments to Add Bifurcated Distribution Options to Defined Benefit Plans



The Internal Revenue Service recently issued [Notice 2017-44](#). This notice provides model amendments that a sponsor of a qualified defined benefit plan may use to amend its plan document to offer bifurcated

distribution options to participants in accordance with final regulations issued under § 417(e) of the Internal Revenue Code (see T.D. 9783, 2016-39 I.R.B. 396, published in the Federal Register on September 9, 2016 (81 FR 62359)). Stakeholders have indicated that providing model amendments would be helpful in light of the changes to the determination letter program that are set forth in Rev. Proc. 2016-37, 2016-29 I.R.B. 136.

Although a plan sponsor may use the model language in this notice to provide a bifurcated distribution option to participants in accordance with the final regulations, a plan that provides for a bifurcated distribution option is not required to include this specific model language. The [sponsor of a plan that currently provides for bifurcated distributions under plan terms](#) that comply with the provisions of § 1.417(e)-1(d)(7), relating to either implicit or explicit bifurcation, does not need to amend those plan terms. In addition, use of the model language by an employer that has adopted a pre-approved plan will not cause the plan to fail to be identical to the pre-approved plan.

More specifically, section 417 provides rules regarding survivor annuity forms of distribution that must be offered under qualified defined benefit plans. Section 417(e)(3) and § 1.417(e)-1(d)(2) and (3) specify the applicable mortality table and the applicable interest rate to be used to determine the minimum present value of a benefit distributed in the form of a lump sum. These minimum present value requirements apply for purposes of § 411(a)(11) and § 417(e)(1), which permit the

distribution of a benefit under a plan to a participant in a lump sum without the consent of the participant or the participant's spouse if the present value of the benefit does not exceed \$5,000. The minimum present value requirements also apply when determining the dollar amount of a lump sum or other accelerated form of distribution elected by a participant.

Under § 1.417(e)-1(d)(6), an exception from the minimum present value requirements of § 417(e)(3) applies to a distribution paid in the form of an annuity that does not decrease during the life of the participant (other than specified permitted decreases). If an optional form of benefit is eligible for this exception, the requirement to use the § 417(e)(3) actuarial assumptions to determine the amount of the benefit payable in the optional form does not apply, and the actuarial assumptions that are used for this purpose must instead satisfy the requirements of § 411(a) that they not result in an impermissible forfeiture of the accrued benefit. See § 1.411(a)-4T(a).

To facilitate the payment of benefits partly in the form of an annuity and partly as a single sum (or other accelerated form), the Department of the Treasury and the Internal Revenue Service (IRS) amended the regulations under § 417(e) to permit plans to simplify the calculation of the amount of certain optional forms of benefit. **The change was made to encourage sponsors of plans that include single sum distribution options to offer participants the additional option to bifurcate their benefits in order to receive a portion in an annuity form (providing financial protection against unexpected longevity) and the remainder in an accelerated form (providing increased liquidity during retirement).**

Section 1.417(e)-1(d)(7) provides rules under which the participant's accrued benefit may be "bifurcated" (into two or more parts), so that the minimum present value requirements of § 417(e)(3) apply only to the portion of the participant's

accrued benefit that is paid in the accelerated form. Section 1.417(e)-1(d)(7) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017, or, if the taxpayer elects, to earlier periods.

Section 1.417(e)-1(d)(7)(ii)(A) and (B) provides two acceptable bifurcation methods that a plan sponsor may choose to include in plan terms. Under the explicit bifurcation method, a plan permits a participant to elect to divide his or her accrued benefit into two or more portions, and the minimum present value rules of § 417(e)(3) are applied separately to each portion of the accrued benefit as if it were the participant's entire benefit. Under the implicit bifurcation method, a plan permits a participant to elect the payment of a single-sum amount if the remaining portion of the participant's accrued benefit is no less than the total accrued benefit reduced by the actuarial equivalent of the single sum (determined using the actuarial assumptions that apply under § 417(e)(3)). Section 1.417(e)-1(d)(7)(iii) sets forth rules of operation for these bifurcation methods, including rules describing certain circumstances under which the implicit bifurcation method is not available.

The appendix to the notice provides model language that may be used for each of these methods, as applicable to the plan. The model language provides for the payment of the minimum amounts required to be paid in order to comply with the rules of § 1.417(e)-1(d)(7). A plan may provide for amounts that exceed the minimum amounts required to be paid pursuant to § 1.417(e)-1(d)(7), but the treatment specified under section III.A of the notice does not apply to a plan amendment that differs from the model language in order to provide greater amounts.

Section 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefit. With respect to benefits attributable to service before an amendment, a plan amendment that effectively eliminates or reduces an early retirement

benefit or retirement-type subsidy or that eliminates an optional form of benefit will be treated as reducing accrued benefits under § 411(d)(6). However, the last sentence of § 411(d)(6)(B) states that the Secretary may, by regulations, provide that § 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy). Section 1.417(e)-1(d)(7)(iv) exercises this authority with respect to certain amendments adopted to implement a bifurcated distribution option pursuant to § 1.417(e)-1(d)(7). Pursuant to this authority, § 1.417(e)-1(d)(7)(iv) provides that § 411(d)(6) is not violated as a result of an amendment to a plan to implement a bifurcated distribution option if certain conditions are satisfied. This relief applies with respect to a plan amendment adopted on or before December 31, 2017, if, for plan years beginning before January 1, 2017, the § 417(e)(3) applicable interest rate and applicable mortality table were used to calculate the amount of a distribution that was made to settle a portion of the accrued benefit under the plan, and, pursuant to § 1.417(e)-1(d)(7), the requirements of § 417(e)(3) and § 1.417(e)-1(d) are not required to be applied to the distribution.



Plan sponsors should read Notice 2017-44 and consider consulting an ERISA attorney with any question.



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