

New IRS Rules for Defined Benefit Plans

On January 18, 2024, the IRS issued long-awaited [final regulations](#) on minimum present value requirements for certain defined benefit (DB) pension plans. The rules clarify the use of prescribed interest rate and mortality tables, rules on pre-retirement mortality discounts, and Social Security level income options. These changes will affect participants, beneficiaries, plan sponsors, fiduciaries, and administrators of DB pension plans.



Background

IRS rules in Section 401(a) establish guidelines for a DB plan to be a qualified plan. In general, under those rules:

- If the participant survives to the annuity starting date, the accrued benefit payable to the participant must be provided in the form of a qualified joint and survivor annuity (QJSA).
- If the participant dies before the annuity starting date and has a surviving spouse, the plan must provide a qualified pre-retirement survivor annuity (QPSA) to the surviving spouse.

Under §417(e)(1), a plan may provide that the present value of a QJSA or QPSA will be distributed immediately if that present value does not exceed the amount that may be distributed without the participant’s consent under §411(a)(11).¹ If the present value of the QJSA or QPSA exceeds that amount, then a plan may immediately distribute the present value of the QJSA or QPSA only if the participant and the spouse of the participant (or, if the participant has died, the surviving spouse) consent in writing to the distribution. Under §417(e)(3), the present value of the QJSA or QPSA must not be less than the present value calculated by using the *applicable mortality table* and the *applicable interest rate*.

An exception applies if the distribution amount is paid in the form of an annual benefit that either does not decrease during the participant’s life (or, for a QPSA, the spouse’s life) or decreases during the participant’s life only because of either:

- The death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant), or
- The cessation or reduction of Social Security supplements or qualified disability benefits

Section 1.401(a)-20 governs survivor annuity requirements. For 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; however, the guidance does not specify a particular actuarial basis for this calculation. Section 1.401(a)-20 provides that a plan does not fail to satisfy the “at least as valuable” requirement merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of §417(e)(3) is calculated using the applicable interest rate under §417(e)(3).

¹ §411(a)(11)(A) generally provides that if the present value of a participant’s nonforfeitable accrued benefit exceeds \$7,000 (\$5,000 for distributions made on or before December 31, 2023), then the benefit may not be distributed immediately without the participant’s consent.

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Section 411(d)(6) provides guidance that prohibits qualified plans from reducing accrued benefits. A plan amendment is treated as impermissibly reducing accrued benefits if it has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy—or eliminating an optional form of benefit—for benefits attributable to service before the amendment.

Section 411(a) governs forfeiture of accrued benefits. An employee's rights in the accrued benefit derived from employee contributions must be nonforfeitable. An employee's rights in the accrued benefit derived from employer contributions must become nonforfeitable at least as quickly as under an approved vesting schedule as governed by the plan document. A right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that it is not payable if the participant dies.

The Pension Protection Act of 2006 (PPA) provided updated guidance on “applicable mortality table,” and “applicable interest rate” terms. Section 417 was not updated consistently to reflect the PPA changes. The IRS issued several notices for additional clarity on certain points. Several subsequent court cases led to the September 2016 issuance of final regulations providing guidance on the minimum present value requirements for DB plan distributions paid to a participant partly in annuity form and partly in lump sum. This did not resolve all the open questions and another set of proposed changes was issued in November 2016, which are now being finalized.

Updates

The new rules update codification to be consistent with the PPA, clarify other existing provisions, and eliminate some obsolete provisions. The rules also supersede conflicting guidance in Revenue Ruling 89-60.

Pre-Retirement Mortality

The regulations address whether a plan that provides a death benefit equal in value to the participant's accrued benefit may apply a pre-retirement mortality discount for the probability of death when determining the amount of a single-sum distribution.

The probability of death using the applicable mortality table is generally considered when determining a minimum lump sum distribution that is equal to the present value under §417(e)(3) of a participant's accrued benefit derived from **employer contributions**. That minimum amount is not required to include the present value of plan death benefits (other than a death benefit that is part of the accrued benefit or part of the optional form of benefit for which present value is determined).

A different rule applies when determining the present value of a participant's accrued benefit derived from **employee contributions**. In calculating a participant's accrued benefit derived from employee contributions, the probability of death during the assumed deferral period—if any—is not considered.

Comment letter feedback raised an issue on this clarification's effect for DB plan designs where the probability of death is not considered in determining the amount of a single-sum distribution because the plan provides a death benefit equal in value to the present value of the accrued benefit. This conflicts with the requirement for a QJSA requirement to be at least as valuable as any other optional form of benefit payable under the plan at the same time because it would qualify for the §417(e)(3) exception.

The U.S. Department of the Treasury and the IRS did not intend for this update to prohibit this DB plan design. The final regulations expand eligibility for the §1.401(a)-20 exception for certain optional benefits. Under the expanded eligibility, the amount payable under an optional form of benefit is treated as calculated using the applicable interest rate and applicable mortality table under §417(e)(3) (and, therefore, is eligible for this exception), even if the amount payable is calculated considering both the probability of death before retirement and any death benefit under the plan.

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The final regulations include a second expansion for eligibility for the exception under §1.401(a)-20. The amount payable under an optional benefit is treated as calculated using the applicable interest rate and applicable mortality table under § 417(e)(3) (and, therefore, eligible for the exception), even if, under the plan, the present value factor used for the **employer-provided** portion of the benefit is the present value factor that is required to be used for the **employee-provided** portion of the benefit.

This change will allow employers to use a single factor for employer and employee contribution benefits to determine the full amount of a single-sum distribution.

The extent to which the probability of death is considered in determining the annuity commencing after normal retirement age that is actuarially equivalent to the accrued benefit commencing at normal retirement age is expected to be addressed in future proposed regulations.

Social Security Level Income Options

A Social Security level income option (SSLIO) provides an annuity with larger payments in earlier years—before an assumed Social Security commencement age—to provide the participant with approximately level retirement income when the Social Security payments begin. An SSLIO is considered an ancillary benefit that is not a protected benefit. Because the periodic payments under an SSLIO decrease during the participant's lifetime and the decrease is not the result of the cessation of an ancillary Social Security supplement, existing rules do not provide an exception from the minimum present value requirements of §417(e)(3) for this benefit.

Both Treasury and the IRS believe it is appropriate to apply the rules of §417(e)(3) to an SSLIO because when a participant's lifetime benefit is paid in that form, a portion of those benefits (which may be a substantial portion of the participant's lifetime benefits) is accelerated and paid over a short period of time, *i.e.*, until assumed Social Security retirement age.

However, Treasury and the IRS agree it is appropriate to permit a plan to satisfy §417(e)(3) by implicitly bifurcating the participant's benefit payable in the form of an SSLIO into a temporary annuity portion and a remaining annuity benefit.

Under the new implicit bifurcation rule, a plan satisfies the minimum present value requirements of §417(e)(3) for the temporary annuity portion of an SSLIO if the plan satisfies two minimum requirements for the remaining annuity benefit:

- The remaining accrued benefit expressed in the normal form and payable at normal retirement age must be at least as great as it would be if an annuity payable in that form and commencing at that age that is actuarially equivalent to the temporary annuity (determined using the applicable §417(e)(3) assumptions) were subtracted from the participant's accrued benefit.
- The remaining immediate annuity expressed in the normal form must be at least as great as it would be if an immediate annuity payable in that form that is actuarially equivalent to the temporary annuity (determined using the applicable §417(e)(3) assumptions) were subtracted from the immediate annuity.

The regulations include two examples, one illustrating the application of the minimum present value requirements to an SSLIO and another illustrating the application of the new implicit bifurcation rule.

Look-Back Months & Stability Periods for Mortality Table & Interest Rate

The regulations retained relief provisions under §411(d)(6) for a plan amendment that changes look-back months or stability periods for the applicable mortality table and applicable interest rate under §417(e)(3). A plan amendment does not violate §411(d)(6) if—for a specified period—the participant is entitled to the greater of the benefits under the pre- and post-amendment timing rules.

In response to comment letter feedback, the final regulations expand this relief for amendments that change the time for determining an interest rate or mortality table that is used for any purpose.

This change is effective for a DB plan amendment that is adopted on or after January 19, 2024 to change the stability period from one permitted stability period to a different permitted stability period, or to change from one permitted look-back month to a different permitted look-back month (including an indirect change to the stability period or look-back month as a result of a change in plan year).

For an amendment that changes the time for determining an interest rate or mortality table that is used for a purpose other than the minimum present value rules and that is adopted before January 19, 2024, whether an impermissible cutback under § 411(d)(6) has occurred is based on applicable law on the date the amendment is adopted.

Effective Date

The changes to §417(e)(3) apply to distributions with annuity starting dates occurring on or after October 1, 2024.

DB plan sponsors should review plan documents to determine if changes will be required to comply with these new clarifications.

Conclusion

With the significant investment you make in your employee benefit plan (EBP), you understand the importance of closely monitoring your plan's areas of risk, internal controls and financial statement amounts, and disclosures, all while maintaining compliance with regulations. That is why many plan sponsors are turning to Forvis Mazars for timely insight, innovative services, and depth of plan resources.

If you have questions about these changes, please contact one of our EBP audit professionals or visit forvismazars.us.

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