

retroactive annuity starting dates. One of these commentators suggests that the proposed regulations would prohibit a defined contribution plan from making payments to cover amounts that were unpaid due to an administrative oversight. This commentator adds that such a prohibition may cause the plan to fail to provide required distributions under section 401(a)(9). The IRS and Treasury Department continue to believe that the rules applicable to retroactive annuity starting dates are relevant only to defined benefit plans because the benefit provided by a defined contribution plan is equal to the account balance and the concerns addressed in these regulations are generally not relevant in such a case. Moreover, the problem raised by the commentator appears to relate to an administrative delay in making a payment (which is an issue covered under § 1.401(a)-20, A-10(b)(3)), rather than the topic of these regulations. In any event, a plan must provide all distributions required by section 401(a)(9) and these regulations do not affect that requirement.

One commentator noted that some plans currently allow retroactive annuity starting dates in reliance upon a good faith interpretation of the statute and existing regulations. This commentator suggested that some of the sponsors of these plans may not wish to provide retroactive annuity starting dates in light of these regulations and requested that the IRS and Treasury Department confirm that plan sponsors who currently allow retroactive annuity starting dates will not violate the anti-cutback rules of section 411(d)(6) if they choose to amend these plans to restrict the availability of retroactive annuity starting dates in the future. The issues raised in this comment are not addressed in this Treasury decision. It is anticipated that such plan amendments will be governed by regulations to be issued under section 411(d)(6) pursuant to section 645 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (115 Stat. 117).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations require the collection of plan participants' written elections requesting qualified retirement

plan distributions, and written spousal consent to these distributions, under limited circumstances. It is anticipated that most small businesses affected by these regulations will be sponsors of qualified retirement plans. Since these written participant elections and written spousal consents are required to be collected only for certain distributions, and since, in the case of a small plan, there will be relatively few distributions per year (and even fewer that are subject to these requirements), small plans that provide distributions for which this collection of information is required will only have to collect a small number of participant elections and spousal consents as a result of these regulations. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Robert M. Walsh and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.417(e)-1(b)(3) also issued under 26 U.S.C. 417(a)(7)(A)(ii); * * *

■ **Par. 2.** Section 1.417(e)-1 is amended by:

■ 1. Revising paragraphs (b)(3)(i), (b)(3)(ii) introductory text, and (b)(3)(ii)(C).

■ 2. Redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as paragraphs (b)(3)(viii) and (b)(3)(ix), respectively.

■ 3. Adding new paragraphs (b)(3)(iii) through (b)(3)(vii).

The additions and revisions read as follows:

1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) * * * (i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date, and, except as otherwise provided in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section, no later than the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date, except as provided in paragraph (b)(3)(iv) of this section regarding retroactive annuity starting dates. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the written explanation was provided to the participant less than 30 days before the annuity starting date, provided that the following conditions are met:

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(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant.

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(iii) The plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant (and before the date that distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section), provided that, except as otherwise provided in paragraph (b)(3)(vii) of this section regarding administrative delay, distributions commence not more than 90 days after the explanation of the QJSA is provided.

(iv) *Retroactive annuity starting dates.* (A) Notwithstanding the requirements of paragraphs (b)(3)(i) and (ii) of this section, pursuant to section 417(a)(7), a defined benefit plan is permitted to provide benefits based on a retroactive annuity starting date if the requirements described in paragraph (b)(3)(v) of this section are satisfied. A defined benefit plan is not required to provide for retroactive annuity starting dates. If a plan does provide for a retroactive annuity starting date, it may impose conditions on the availability of a