

the same value could be grouped for purposes of disclosing relative value. Under the proposed regulations, two or more optional forms of benefit were treated as having approximately the same value if those optional forms of benefit varied in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA.

Several commentators recommended changes in this 5 percentage point band. One commentator suggested that a band of 7.5 percentage points be used to simplify compliance and ease the administrative burden to plans. The commentator said that a band of 7.5 percentage points would allow a plan to treat unsubsidized optional forms of benefit for virtually all retiring participants as having approximately equal value. By contrast, another commentator favored a maximum band of 3 percentage points in order for participants to receive adequate disclosure about significant differences in value. The commentator said that a 5 percentage point difference in value was significant enough to be brought to the participant's attention.

These final regulations generally retain the 5 percentage point banding rule of the proposed regulations. This rule aims to minimize the compliance burdens for plans to the extent consistent with providing participants with information on differences in value that are material in light of the inexact nature of the actuarial assumptions used.

The proposed regulations also would have allowed a plan to treat all of its forms of benefit as approximately equal in value if the actuarial present value of all of those forms is not less than 95 percent of the actuarial present value of the QJSA. The final regulations permit a plan that is comparing the relative value of each optional form to the value of the QJSA for a married participant to treat each presently available optional form of benefit that has an actuarial present value of at least 95 percent of the actuarial present value of the QJSA as having approximately the same value as the QJSA. In addition, in the case of a plan that is comparing the relative value of each optional form to the value of the single life annuity, if all of the optional forms of benefit presently available have actuarial present values that are at least 95 percent, but not greater than 102.5 percent, of the actuarial present value of the presently available single life annuity, the plan is

permitted to treat all the presently available forms of distribution as approximately equal in value.

Some commentators recommended that participants have the right to know what actuarial assumptions were used in the plan's estimates of relative value. The final regulations require that this information be made available upon request if it is not provided in the notice.

Several commentators raised questions concerning whether the methods used in disclosing relative value of a plan's optional forms of benefit in accordance with these regulations affect the application of the requirement at § 1.401(a)-20, Q&A-16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan. While this issue is not addressed in these final regulations, there is no requirement, or implication, that the same actuarial assumptions used by a plan for purposes of disclosing relative value in accordance with these regulations must be applied for purposes of the requirement in § 1.401(a)-20, Q&A-16, that the QJSA for married participants be at least as valuable as any other optional form of benefit under the plan.

One commentator requested that these regulations address the use of electronic media to deliver the QJSA explanation or the QPSA explanation. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106-229, 114 Stat. 464 (2000). The IRS and the Treasury Department have invited comments on these issues, and anticipate issuing further guidance regarding electronic notices.

Commentators raised a number of other issues, including issues that relate to basic QJSA rules that are not addressed in these regulations and a request for the final regulations to include model language that can be included in a QJSA notice. These regulations do not include model language for several reasons, including the wide variety of distribution alternatives found in plans (including the variety of actuarial assumptions used to calculate optional forms of benefit), the variations in the average participant in the plan for purposes of understandability, as well as inclusion

in the regulations of several detailed examples showing how the information can be provided in order to disclose relative value.

Effective Date

These final regulations are applicable to QJSA explanations with respect to distributions with to annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)-1(b)(3)(vi), the date of commencement of payments based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of this effective date.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Linda S.F. Marshall and John T. Ricotta of the Office of the 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 in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.