Revenue Ruling 2007-67

Section 417. -- Definitions and Special Rules For Purposes of Minimum Survivor Annuity Requirements

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

Rev. Rul. 2007-67

ISSUES

1. Do the timing rules for the determination of the applicable interest rate under §§ 1.417(e)-1 (d)(4) and 1.417(e)-1(d)(10)(ii) of the Income Tax Regulations continue to apply for distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008?

2. What mortality table is the applicable mortality table under § 417(e)(3)(B) of the Internal Revenue Code ("Code") for distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008?

3. Does an amendment that implements the new interest rates and mortality table under § 417 (e)(3) violate the requirements of § 411(d)(6)?

LAW AND ANALYSIS

Section 417(e)(3) provides rules for the determination of the present value of plan benefits for purposes of § 417(e). Section 417(e)(3)(A) generally provides that for purposes of § 417(e)(1) and (e)(2), the present value is not permitted to be less than the present value calculated by using the applicable mortality table and the applicable interest rate as defined in § 417(e)(3)(B) and (C) respectively. In addition, § 411(a)(11)(B) provides that the determination of present value for purposes of § 411(a)(11)(A) is calculated in accordance with § 417(e)(3). Sections 203(e)(1), 203(e)(2), and 205(g)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) provide corresponding provisions to §§ 411(a)(11)(A), 411(a)(11)(B), and 417(e)(3) of the Code.

Section 1.417(e)-1(d)(1) provides that a defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to §§ 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in § 1.417(e)-1(d)(3) (determined for the month described in § 1.417(e)-1(d)(4)) and the applicable mortality table described in § 1.417(e)-1(d)(2). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the rules described in the preceding sentence. Under § 1.417(e)-1(d)(1), these rules must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required. Section 1.417(e)-1(d)(6) sets forth exceptions from the otherwise applicable minimum present value requirements of § 1.417(e)-1(d)(1). In addition, § 411(a)(13)(A) provides an exception for

certain applicable defined benefit plans described in § 411(a)(13)(C).

The U.S. Supreme Court, in <u>Arizona v. Norris</u>, 463 U.S. 1073, 1084-1086 (1983), held that the application of sex-distinct actuarial tables to employees based upon their gender in calculating the amount of retirement benefits violates Title VII of the Civil Rights Act of 1964.

For plan years beginning prior to January 1, 2008, § 417(e)(3)(A)(ii)(II) defines the term "applicable interest rate" as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(4) generally provides that a plan must provide for the applicable interest rate to be held constant for a stability period of one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year, and that the applicable interest rate for each stability period is the annual rate of interest on 30-year Treasury constant maturities for a specified lookback month that is the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

For plan years beginning prior to January 1, 2008, § 417(e)(3)(A)(ii)(I) defines the term "applicable mortality table" as the mortality table prescribed by the Secretary and provides that such table shall be based on the prevailing commissioners' standard table (described in § 807 (d)(5)(A)) used to determine group reserves for group annuity contracts issued on the date as of which the present value is determined. Rev. Rul. 2001-62, 2001-2 C.B. 632, provided the applicable mortality table for plan years beginning prior to January 1, 2008, for distributions with annuity starting dates on or after December 31, 2002. Rev. Rul. 2001-62 also permitted a plan to specify any earlier date in 2002 for the required use of the mortality table set forth in that revenue ruling. Rev. Rul. 95-6, 1995-1 C.B. 80 provided the applicable mortality table for distributions with annuity starting dates prior to the application of Rev. Rul. 2001-62.

For plan years beginning on or after January 1, 2008, section 302 of the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), changed the present value determination under § 417(e)(3) of the Code. For such plan years, § 417(e)(3)(C) defines the term "applicable interest rate" as the adjusted first, second, and third segment rates applied under rules similar to the rules of § 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe. For this purpose, the adjusted first, second, and third segment rates are determined without regard to the 24-month averaging provided under § 430(h)(2)(D)(i), and § 417(e)(3)(D)(ii) provides a transition rule that phases in the use of the segment rates over five years.

In addition, for plan years beginning on or after January 1, 2008, § 417(e)(3)(B) defines the term "applicable mortality table" as a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of § 430(h)(3) (without regard to subparagraph (C) or (D) of such section). In contrast to the phase in of the use of the segment rates with regard to the applicable interest rate, there is no transition rule with regard to the applicable mortality table. In addition, PPA '06 left unchanged the mortality table which generally must be used for the purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C), or (D).

Notice 2007-81, 2007-44 I.R.B. 899, specifies how the adjusted segment rates that are used to determine minimum present values pursuant to § 417(e)(3) are determined, and specifies those rates for August 2007.

Section § 1.430(h)(3)-1 of the proposed Income Tax Regulations (72 FR 29456) proposes

rules for the mortality tables to be used in determining present value or making any computation under § 430. The proposed regulation provides for separate mortality tables for male and females and for annuitants and nonannuitants. The proposed regulation also provides an option for smaller plans to use male and female blended static tables for all participants – in lieu of separate tables for annuitants and nonannuitants. Under the proposed regulation, expected improvements in mortality would be taken into account through the use of static tables that are updated annually, or through the use of generational tables. The proposed regulation provides the static mortality tables that are to be used with respect to valuation dates occurring during 2008. The static mortality tables that are to be used with respect to valuation dates occurring in later years are to be published in the Internal Revenue Bulletin.

Section 411(d)(6)(A) generally prohibits a plan amendment that decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that an amendment that eliminates an optional form of benefit is treated as reducing a participant's accrued benefit, but permits the Secretary of Treasury to provide for the elimination of certain optional forms of benefits under regulations. Section 1.411(d)-3(a)(1) provides that under § 411(d)(6)(A), a plan is not a qualified plan (and a trust forming part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided under § 412(c)(8) Changed to § 412(d)(2) by amendments made by PPA '06. of the Code, section 4281 of the ERISA, or other applicable law.

Under section 1107 of PPA '06, a plan sponsor is permitted to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of governmental plans). This amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. If section 1107 of PPA '06 applies to an amendment of a plan, the plan does not fail to satisfy the requirements of § 411(d)(6) of the Code by reason of the amendment except as provided by the Secretary of the Treasury.

HOLDING

Issue 1

Pursuant to this revenue ruling, the rules of §§ 1.417(e)-1(d)(4) and 1.417(e)-1(d)(10)(ii) regarding the time for determining the applicable interest rate continue to apply for plan years beginning on or after January 1, 2008, without regard to the change in the basis for determining the applicable interest rate. If the first day of the first plan year beginning on or after January 1, 2008, does not coincide with the first day of a stability period for a plan, the applicable interest rate for distributions with annuity starting dates during the stability period that contains the first day of the plan year will change during that period. For distributions with annuity starting dates within that period that are before the effective date of the PPA '06 statutory change, the applicable interest rate is determined without regard to the statutory change, and for distributions with annuity starting dates within that period that are on or after the effective date of the statutory change, the applicable interest rate is determined reflecting the statutory change.

Issue 2

The § 417(e)(3) applicable mortality table for 2008 is published in the Appendix to this revenue ruling (the "2008 Applicable Mortality Table"). This mortality table is based upon a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates published in § 1.430(h)(3)-1 of the proposed regulations for valuation dates occurring in 2008. The table shows, for each age, the number living based upon a starting population of one million lives at age 1 (l_x), and the annual rate of mortality (q_x).

The § 417(e)(3) applicable mortality table for each subsequent year will be published in the future (the "Subsequent Applicable Mortality Tables"). Except as otherwise stated in future guidance, the applicable mortality table for each subsequent year will be determined from the § 430(h)(3)(A) mortality tables on the same basis as the applicable mortality table for 2008.

In general, the applicable mortality table for a year applies to distributions with annuity starting dates that occur during stability periods that begin during the calendar year to which the applicable mortality table applies. However, pursuant to the effective date rules of PPA' 06, the 2008 Applicable Mortality Table does not apply before the first day of the first plan year beginning in 2008. Thus, for example, in the case of a plan with a September 1 to August 31 plan year, and a calendar year stability period, the 2008 Applicable Mortality Table (as well as the applicable interest rates that are based on the § 430(h)(2)(C) segment rates) would not apply to distributions with annuity starting dates prior to September 1, 2008, but would apply to distributions with annuity starting dates beginning on or after September 1, 2008.

A reference in a plan to the applicable § 417(e)(3) mortality table will, as of a particular date, be treated as a reference to the table that applies to distributions with annuity starting dates (other than a retroactive annuity starting date) on that date. Such a reference will mean the 2008 Applicable Mortality Table for annuity starting dates to which that mortality table applies, and each Subsequent Applicable Mortality Table for annuity starting dates to which the Subsequent Applicable Mortality Table applies. Such a reference would not have to be amended each year to reflect changes in the applicable mortality table. By contrast, a plan provision that specifically refers to an annual applicable mortality table (such as the 2008 Applicable Mortality Table) would have to be amended each year to reflect Subsequent Applicable Mortality Tables, and such amendments would have to satisfy § 411(d)(6).

Issue 3

Pursuant to section 1107 of PPA '06, an amendment to determine the applicable interest rate under the § 417(e)(3) rules in effect for plan years beginning on or after January 1, 2008, will not violate § 411(d)(6) of the Code or the corresponding provision of ERISA solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the modified segment rates for the 30-year Treasury rate for the same period. However, if the amendment changes the time for determining the interest rate, the requirements of § 1.417(e)-1(d)(10)(ii) must be satisfied. In addition, if the cause of the reduction is an amendment to substitute the modified segment rates for a rate that is not the 30-year Treasury rate, the amendment must satisfy § 411(d)(6).

Pursuant to section 1107 of PPA '06, a plan amendment to incorporate by reference the applicable mortality table under § 417(e)(3) that is prescribed by this revenue ruling and by subsequent guidance issued by the Commissioner will not violate § 411(d)(6) of the Code or the corresponding provision of ERISA solely because of a reduction in accrued benefits or a reduction in the amount of any distribution with an annuity starting date occurring during a plan

year beginning in 2008 or in a subsequent year if the cause of such reduction is the substitution of the applicable § 417(e)(3) mortality table for the prior applicable mortality table under § 417(e)(3).

EFFECTIVE DATE

This revenue ruling is effective for plan years that begin on or after January 1, 2008.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2001-62 is modified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lawrence Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. However, other personnel from the Service and the Treasury Department participated in preparing this revenue ruling. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Isaacs may be e-mailed at RetirementPlanQuestions@irs.gov.

APPENDIX

2008 Applicable Mortality Table

Age	lx	qx
1	1,000,000.00	0.000380
2	999,620.00	0.000252
3	999,368.10	0.000200
4	999,168.23	0.000153
5	999,015.36	0.000139
6	998,876.50	0.000132
7	998,744.65	0.000126
8	998,618.81	0.000114
9	998,504.97	0.000110
10	998,395.13	0.000111
11	998,284.31	0.000114
12	998,170.51	0.000118
13	998,052.73	0.000124
14	997,928.97	0.000135
15	997,794.25	0.000145
16	997,649.57	0.000154

17	997,495.93	0.000164
18	997,332.34	0.000170
19	997,162.79	0.000174
20	996,989.28	0.000177
21	996,812.81	0.000182
22	996,631.39	0.000189
23	996,443.03	0.000200
24	996,243.74	0.000210
25	996,034.53	0.000224
26	995,811.42	0.000246
27	995,566.45	0.000255
28	995,312.58	0.000264
29	995,049.82	0.000278
30	994,773.20	0.000303
31	994,471.78	0.000350
32	994,123.71	0.000396
33	993,730.04	0.000441
34	993,291.81	0.000486
35	992,809.07	0.000529
36	992,283.87	0.000569
37	991,719.26	0.000608
38	991,116.29	0.000636
39	990,485.94	0.000664
40	989,828.26	0.000698
41	989,137.36	0.000738
42	988,407.38	0.000784
43	987,632.47	0.000836
44	986,806.81	0.000897
45	985,921.64	0.000954
46	984,981.07	0.001010
47	983,986.24	0.001072
48	982,931.41	0.001150
49	981,801.04	0.001237
50	980,586.55	0.001347
51	979,265.70	0.001449
52	977,846.74	0.001597
53	976,285.12	0.001793
54	974,534.64	0.002020

55	972,566.08	0.002378
56	970,253.32	0.002853
57	967,485.19	0.003279
58	964,312.81	0.003746
59	960,700.49	0.004251
60	956,616.55	0.004856
61	951,971.22	0.005634
62	946,607.81	0.006471
63	940,482.31	0.007518
64	933,411.76	0.008493
65	925,484.29	0.009602
66	916,597.79	0.010968
67	906,544.55	0.012222
68	895,464.76	0.013448
69	883,422.55	0.014889
70	870,269.27	0.016329
71	856,058.64	0.017998
72	840,651.30	0.020050
73	823,796.24	0.022220
74	805,491.49	0.024781
75	785,530.61	0.027627
76	763,828.76	0.030695
77	740,383.04	0.034561
78	714,794.66	0.038635
79	687,178.57	0.043206
80	657,488.33	0.048326
81	625,714.55	0.054304
82	591,735.75	0.061007
83	555,635.73	0.067895
84	517,910.84	0.076183
85	478,454.84	0.085221
86	437,680.44	0.095318
87	395,961.62	0.107508
88	353,392.58	0.120363
89	310,857.19	0.134135
90	269,160.36	0.149293
91	228,976.60	0.163173
92	191,613.80	0.178866

93	157,340.61	0.194378
94	126,757.06	0.208519
95	100,325.80	0.224167
96	77,836.07	0.237405
97	59,357.40	0.251508
98	44,428.54	0.265606
99	32,628.05	0.276614
100	23,602.67	0.286677
101	16,836.33	0.301731
102	11,756.29	0.313092
103	8,075.49	0.324542
104	5,454.65	0.335529
105	3,624.46	0.345501
106	2,372.21	0.353906
107	1,532.67	0.361363
108	978.82	0.368721
109	617.91	0.375772
110	385.72	0.382309
111	238.26	0.388123
112	145.79	0.393008
113	88.49	0.396754
114	53.38	0.399154
115	32.07	0.400000
116	19.24	0.400000
117	11.54	0.400000
118	6.92	0.400000
119	4.15	0.400000
120	2.49	1.000000