

CC:ITA:RU (REG-124667-02)
Internal Revenue Service
Room 5226
POB 7604 Ben Franklin Station
Washington, DC 20044

January 2, 2003

Dear Sir or Madam,

I am commenting on your proposed regulations "Disclosure of Relative Values of Optional Forms of Benefit", REG-124667-02.

I direct the New England Pension Assistance Project (NEPAP), one of eight pension counseling projects funded in part by the U.S. Administration on Aging. NEPAP provides free pension information, education and investigation to people having problems or questions regarding their pension benefits. Since the beginning of the project in 1994, we have assisted more than 2,700 clients.

Through the work of our project, we come in contact with many individuals who are at the point of electing benefits. We also speak to spouses after the death of a pension participant who regret the election of single life annuities, wishing instead that they had not waived their right to a joint and survivor annuity. It is with this background that I am commenting on your proposed regulations.

Importance of the election process

The election process is very important and for many individuals confusing. Many people have approached our project asking for advice on which form of benefit they should take. The answer to that question is complex and personal, but one factor that is very important to know is the value of each form of benefit being offered. Without the assistance of an actuary, a plan participant cannot easily determine which benefit is worth more. Since it is the plan administrator who is in the best position to have this information, it seems reasonable to require that he provide it to the plan participant at the time of election. Even if the plan administrator does not currently have the information, efficient public policy would place the burden on the

plan administrator to determine the relative values, rather than have each retiring participant have to separately hire actuaries or go without this crucial piece of information.

It is our experience that many participants do not look beyond the cash being offered at the time of election. Lump sums are appealing because they are often the largest sum of money the participant has ever been offered. It takes a somewhat sophisticated person to realize that a small monthly benefit may actually be worth more. Providing this information in a clear and easily understood form will make the decision process easier for individuals and prevent many from short changing themselves.

The choice between a single life annuity and a joint and survivor annuity presents the same problem. While the law requires that the joint and survivor annuity (J&SA) be of equal or greater value to the single life annuity, a small but significant number of plans subsidize the J&SA. Participants should know that the J&SA is subsidized and by how much if it is.

Encouraging married couples to elect a J&SA protects the surviving spouse at the time of the death of the worker. We know that the poverty rate of older single individuals, especially women, is significantly higher than that of couples. Married couples over 75 years of age had a household poverty rate in 2000 of only 4.5%. However, the rate for unrelated individuals over 75 in the same year was 19.3%. The loss of a spouse is a devastating emotional and economic event. Therefore, providing the information, that the benefit which will protect the surviving member of the couple is worth more than or is equal to any other benefit being offered, is crucial.

Specific comments on proposed regulations

Restrict the banding to 3%: The proposed regulations allow a plan to present optional forms of benefits that are within 5% points of the J&SA to be reported as being of the same value. While the intention of this regulation is to ease the calculation and presentation burden to the plans and to recognize the inexact nature of the calculations, 5% is too great a range. A 3% point difference would be more appropriate as a benefit that is worth 5% less than another benefit is a significant difference for participants. If you were told that you are going to receive 5% less in pay than you are now receiving most people would consider that something they would like to know.

Ability to request specific information is crucial: The proposed regulations are a good step toward alerting participants of the relative value of the benefits they are being offered. But requiring the plan to provide specific information to individuals when requested is crucial. Most participants will not request the specific information because other factors will determine their choice. But for the participants for whom the value of the benefit is the deciding factor, they need access to the specific information. This is particularly true if the banding is kept at 5%.

If the only information that a plan is required to provide is general, a participant who needs specific information on his or her individual benefit choices would still have to hire an actuary. For the reasons stated above, this would be inefficient and possibly lead to poor retirement choices.

Allow notices to unmarried participants be given in relationship to the single life annuity option: For individuals who are not married and can not elect a joint and survivor annuity, the plan should be allowed to provide the relative value of the benefit in relationship to the single life annuity. This option would be clearer and would be pegged to an actual option available to the participant.

Clarify the assumptions used: The proposed regulations allow plans to use any reasonable assumptions they choose. 1.417(a)(3)-1(c)(2)(iii). They also provide that the assumptions need not be the same assumptions used to calculate the benefit. My concern with this much flexibility combined with the 5% band will allow plans to game the calculation to make it appear that all the benefit options are of approximately equal value. It would seem that the plans should be required to use either the assumptions set by the Commissioner or use the assumptions that they used to calculate the actual benefits.

Require disclosure of assumptions in all situations: The proposed regulation allow the plan not to disclose assumptions if the plan is expressing the relative values as a percentage or factor of the actuarial present value of the QJSA. 1.417(c)(2)(iv)(B). Knowing the assumptions upon any of these calculations are based is the one way a participant may double check their benefits. It is probably the most important safeguard a participant can be given in insuring the plan has not made a mistake. As no one person or system is fail-proof, it seems reasonable and not burdensome to provide participants in all cases with the assumptions upon which the relative values have been calculated.

General Suggestions

Provide a model form: Since the options being offered plans for disclosure are quiet varied, it would be helpful to plans and to participants if the Internal Revenue Service provided several model forms with appropriate language. In this way there would be a standard from which participants, plan administrators and advocates for participants, such as our program, could judge the disclosure information. One of the challenges with educating participants regarding their choices is to develop a language that participants can understand. The Service can assist in this process by providing model forms and language. If it is left up to individual plans to develop their own forms, it will be years before a generally acceptable and easily understood layman's language is developed.

An example of model language that would be helpful would be the explanation of the concept of relative value which is required to be provided. 1.417(a)(3)-1(c)(2)(iv). At this point some plans

may want to devise their own language but many may just wish to adopt a standard explanation. Over time, the Service could refine its explanation from plans' explanation to settle on the clearest. Therefore the Service should not prescribe the language at this time but should take the lead in developing clear language.

Thank you for the opportunity to comment on these proposed regulations. They are an important step forward in providing usable information to participants and their spouses at the time of election of benefits. If you would like clarification of any of the comments I have made, please contact me at the above address.

Very truly yours,

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