UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:21-cv-04319-SB-JC	Date: March 3, 2022

Title:	*Harold Cooper v. Willis Towers Watson Pension Plan for U.S. Emps. et al.*

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**

Jennifer Graciano	N/A
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Appearing	None Appearing

Proceedings: ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT [Dkt. Nos. 34, 35]

This case involves a dispute over the "anti-cutback" rule of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1054(g), and its corresponding provision in the Internal Revenue Code (I.R.C.), 26 U.S.C. § 411(d)(6). Plaintiff Harold Cooper is a participant in Defendant Willis Towers Watson Pension Plan for United States Employees (the Plan), which is administered by Defendant Willis Towers Watson Benefit Plans Administration Committee (the Committee). The Plan previously allowed participants to defer receipt of their pension benefits until the January 1st nearest their 70th birthday. In July 2017, the Plan was amended to require participants, including Plaintiff, to begin receiving their pension benefit not later than their attainment of age 62. Citing the Plan's original terms, Plaintiff filed a claim to defer his pension benefit until age 70 and argued that the July 2017 amendment constituted an illegal cutback of his vested and accrued benefits. The Committee denied Plaintiff's claim and his appeal of the denial. Plaintiff now challenges the Committee's decision. The parties filed cross-motions for summary judgment, Pltf. Mot, Dkt. No. 34 and Def. Mot., Dkt. No. 35, and oppositions, Pltf. Opp., Dkt. No. 42 and

Def. Opp., Dkt. No. 44. For the following reasons, the Court **grants** Plaintiff's motion and **denies** Defendants' motion.

I. BACKGROUND

Plaintiff worked as an actuary at Towers Perrin, a predecessor entity to Willis Towers Watson, until March 15, 1991. Joint Administrative Record (AR) 106, Dkt. No. 32.[1] At the time of his termination, Plaintiff was vested in an accrued pension benefit under the 1988 version of the Towers Perrin Retirement Income Plan for U.S. Employees (the 1988 Plan).[2] AR 26. Plaintiff was a Terminated Vested Member, rather than a Retired Member, because his employment with Towers Perrin terminated before he reached normal retirement age. *Id.*

Under the terms of the 1988 Plan, Plaintiff had the right to defer commencement of his pension benefit until age 70, as long he submitted a written request for commencement by the January 1st nearest the date on which he attained that age. AR 389.

The current version of the Plan took effect on July 1, 2017 (the 2017 Plan). AR 115. Section 6.01(b) of the 2017 Plan states:

> **Timing of Distribution and Special Rules**: [D]istribution of benefits under this section to the Participant shall be made as soon as practicable after the Participant's Separation from Service; provided, however, that in the case of a Participant whose lump sum value of the vested Accrued Benefit exceeds $5,000, distribution shall be made as of the first day of the month following the latest of (A) the Participant's Separation from Service, (B) the Participant's attainment of age 62 or (C) the Participant's attainment of Normal Retirement

[1] The page numbers cited in this Order refer to the original pagination of the Joint Administrative Record rather than the page numbers associated with the docket entry.

[2] The Towers Perrin Retirement Income Plan for U.S. Employees would ultimately be renamed the Willis Towers Watson Pension Plan for United States Employees after a series of mergers and acquisitions. AR 126.

> Age[3] unless the Participant consents to an earlier distribution following his Separation from Service.

AR 156. In late 2018, Plaintiff called the Plan's service center to dispute Section 6.01(b) and argued that the 1988 Plan gave him the right to delay commencement of his pension benefit until a later age. AR 373. In response to Plaintiff's call, the Committee sent Plaintiff a letter on October 4, 2018, explaining that it considered the July 2017 amendment to be legally valid. *Id.* On December 16, 2018, Plaintiff submitted a formal written claim to defer his pension benefit. AR 375-76. Plaintiff argued that the timing and commencement of his pension benefits are protected "optional forms of benefit" under I.R.C. § 411(d)(6), and that the 2017 Amendment requiring Plaintiff to begin receiving his benefits by age 62 was an illegal cutback of those benefits in violation of that provision. *Id.*

On February 12, 2019, Defendants denied Plaintiff's claim. AR 378. Defendants stated that "[a]ny amendment to the Plan regarding the distribution of Plan benefits upon the attainment of normal retirement age (or age 62, if later) is not a prohibited cutback . . . because the payment of retirement benefits after normal retirement age is not a protected benefit." AR 379. Defendants also cited 26 C.F.R. § 1.417(e)–1(b)(1) to support their assertion that, because Plaintiff had attained age 62, his consent was not required to commence his benefits under the Plan. AR 380.

On May 29, 2019, Plaintiff appealed the Committee's decision. AR 381. Plaintiff reiterated that "the right to commence benefits at a time specified by the plan in effect when the benefits were earned . . . cannot be restricted by subsequent amendment" under the anti-cutback provisions of ERISA and the I.R.C. *Id.* On July 23, 2019, the Committee denied Plaintiff's appeal. AR 388. The Committee agreed with Plaintiff that the right to defer is a protected optional form of benefit under I.R.C. § 411(d)(6) that could not be eliminated by amendment unless an exception to the anti-cutback rule applied. AR 391. The Committee asserted that the exception stated in 26 C.F.R. § 1.411(d)–4, Q & A–2(b)(2)(v) applied, and that this exception "permits the Plan to be amended to eliminate the deferral of benefit commencement until a terminated participant's required beginning date and require that payments commence by the later of a participant's attainment of normal retirement age or age 62." AR 392. Having exhausted his administrative remedies, Plaintiff filed this action on May 24, 2021,

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[3] Under the 1988 Plan, Plaintiff's normal retirement age was the January 1st nearest his 60th birthday. AR 40.

challenging the Committee's denial of his claim to defer commencement of his pension benefits under ERISA § 502(a)(1)(B).[4] Complaint ¶ 2, Dkt. No. 1.

After hearing oral argument on the parties' cross-motions for summary judgment, the Court took the matter under submission. Dkt. No. 46. The Court then conducted further research and became aware of an entry in the Federal Register by the IRS titled "Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans." The Court ordered supplemental briefing on whether the IRS's interpretation of the anti-cutback rule, as articulated in Subsection G of that Federal Register Entry, is entitled to deference under *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) or *Auer v. Robbins*, 519 U.S. 452 (1997). Dkt. No. 47; *see* Dkt. Nos. 48 (Pltf. Supp. Brief) and 49 (Def. Supp. Brief).

II. STANDARD OF REVIEW

"In the ERISA context, 'a motion for summary judgment is merely the conduit to bring the legal question before the district court, and the usual tests of summary judgement, such as whether a genuine dispute of material fact exists, do not apply.'" *Harlick v. Blue Shield of Cal.*, 686 F.3d 699, 706 (9th Cir. 2012) (quoting *Nolan v. Head Coll.*, 551 F.3d 1148, 1154 (9th Cir. 2009)).

"[T]he de novo standard of review normally applies when a court reviews a claim that a plan administrator improperly denied benefits under § 502(a)(1)(B) of ERISA." *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1107 (9th Cir. 2000). However, the abuse of discretion standard applies when a pension plan confers discretionary authority on a plan administrator to construe the terms of a pension plan and to determine benefit eligibility. *Id.* (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). "[T]he presumption of de novo review can be overcome only when a plan's reservation of discretion is unambiguous." *Id.* (citing *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1088-89 (9th Cir. 1999)). Here, the Plan grants the Committee "total and complete discretion to interpret the Plan and all documents comprising the Plan . . . and to determine all questions arising in the administration, interpretation, and application of the Plan, including eligibility for benefits," and provides that such "absolute discretion . . . will be

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[4] Initially, Plaintiff also brought an alternative claim for injunctive relief under ERISA § 502a)(3), but he dropped the claim as "moot" in his Opposition. Pltf. Opp. at 18-19.

final, conclusive and binding upon all Participants." AR 174. As this is an "unambiguous" reservation of discretion, *McDaniel*, 203 F.3d at 1107, the Court reviews the Committee's construction of the Plan's terms for abuse of discretion, *see Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 943 & n.1 (9th Cir. 1999) (applying the abuse of discretion standard where the plan stated "we have full and exclusive authority to interpret the Group Policy . . . [and] any decision we make . . . is conclusive and binding").

But the analysis does not end there. In denying Plaintiff's claim to defer benefits, the Committee did not merely construe the terms of the Plan, but also interpreted at length several provisions of the I.R.C. and ERISA as well as multiple Treasury Regulations and the seminal Supreme Court anti-cutback rule case, *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004). *See* AR 378-80, 389-93. The Ninth Circuit has cautioned that courts "cannot defer to a plan administrator's construction of a federal statute." *McDaniel*, 203 F.3d at 1108. Thus, because "[t]he interpretation of a federal statute, such as ERISA, is a question of law," the Court reviews the Committee's interpretations of law de novo. *Arnold v. Arrow Transp. Co. of Del.*, 926 F.2d 782, 785 (9th Cir. 1991); *see also Burrey v. Pac. Gas & Elec. Co.*, 159 F.3d 388, 391-92 (9th Cir. 1998) ("[I]n this case, the retirement plan incorporated by reference the determination of benefits based upon an interpretation of I.R.C. § 414(n), defining 'leased employees.' The interpretation of § 414(n) is a question of law which we review de novo.").

III. ANALYSIS

A. Plaintiff Had a Right to Defer Receipt of His Pension Benefit Until Age 70 Under the 1988 Plan.

Defendants raise a threshold argument that, if correct, would dispose of Plaintiff's case without need for further analysis: that the 1988 Plan did not give Plaintiff the right to defer receipt of his pension benefit until age 70, and in fact "specifically provided that Plaintiff could commence his pension benefit between the ages of 50 and 60, but . . . not . . . past the age of 60." Def. Mot. at 9.

Defendants rely on Section 2.6 of the 1988 Plan, which states:

> "**Annuity Commencement Date**" means the first day of the month as of which the initial payment of a benefit payable to a Member, his Spouse, or Beneficiary, as applicable under this Plan, is scheduled to be made. For a Retired Member, his Annuity Commencement Date

> shall be the first day of the month coincident with his Normal, Early or Postponed Retirement Date or any later date; provided, however, that a Member's Annuity Commencement Date shall not be later than (i) the January 1 nearest the date on which the Member attained age 70, or (ii) in the case of a Member who attained age 70-1/2 before January 1, 1988, the calendar year in which he retires. For a Terminated Vested Member, his Annuity Commencement Date shall be the first day of the month which occurs within the ten years immediately preceding his Normal Retirement Date and as of which the Member elects in a timely manner that the benefit commence.

AR 15-16. Defendants argue that "[i]f the Plan had intended to give a Terminated Vested Member [like Plaintiff] the option of deferral to age 70, then the Plan would not have included a distinction between Retired Members and Terminated Vested Members" as to their annuity commencement dates, and that "the last sentence of the definition of Terminated Vested Member would have been unnecessary and Terminated Vested Members would have simply been treated the same as Retired Members." Def. Opp. at 4.

But Section 2.6 cannot be read in isolation; it must be read in conjunction with Section 6.4 of the 1988 Plan, which states that:

> In order to commence his vested benefit, a Terminated Vested Member must complete and deliver to Towers Perrin a request in writing for such vested benefit within the sixty (60) day period immediately preceding his selected Annuity Commencement Date. If such request is not received prior to his Normal Retirement Date, sixty (60) days prior to such Date Towers Perrin will send notice to him of his entitlement to benefit payments under this Plan. In no event, however, will a Terminated Vested Member's Annuity Commencement Date precede the date as of which the Committee receives his written request for commencement of his vested benefit, provided, however, **that the Annuity Commencement Date shall in no event be later than the January l nearest the date on which the Member attained age 70**.

AR 39 (emphasis added). Together, Sections 2.6 and 6.4 establish a reasonably clear procedure that (a) allows for, but does not mandate, an early election and (b) sets a maximum deferral date. Under Section 2.6, if a Terminated Vested Member seeks to commence receipt of his benefits before age 60 (the Plan-defined normal retirement age), then he must make an election to that effect within the ten years immediately preceding his 60th birthday. Under Section 6.4, if no such election has been made, then the Plan will send a notice of benefits to the Terminated Vested Member 60 days prior to his 60th birthday. At that point, the Terminated Vested Member may defer the Annuity Commencement Date until not later than January 1st of the year in which he turns 70. Plaintiff, as a Terminated Vested Member, did not make the election under Section 2.6 before turning 60 and thus is entitled under Section 6.4 of the Plan to defer payment of his annuity up to his 70th birthday.[5]

Indeed, during the claim and appeal process, Defendants agreed that the 1988 Plan gave Plaintiff the right to defer commencement of his pension benefit until age 70. *See* AR 389 ("Under the above provisions, you would have been able to defer payment of your benefit until January 1, 2028."). Plaintiff argues that Defendants "waived" their right to advance a different interpretation of the 1988 Plan and that the Court "should not permit Defendants to change their position in this litigation." Pltf. Opp. at 11-12. Plaintiff is incorrect. *See Meakin v. Cal. Field Ironworkers Pension Trust*, 774 F. App'x 1036, 1038 (9th Cir. 2019) ("Plan administrators are not shackled to original interpretations . . . When administrators are granted discretion in interpreting plan provisions, their first interpretation is not set in amber . . ."). But while Defendants may raise Plan interpretations for the first time in litigation, such interpretations are not entitled to the same deference as those made during the claim and appeal process. This is because "a contrary rule would allow claimants, who are entitled to sue once a claim had been 'deemed denied,' to be 'sandbagged' by a rationale the plan administrator adduces only after the suit has commenced." *Jebian v. Hewlett-Packard Co. Emp. Benefits Org. Income Prot. Plan*, 349 F.3d 1098, 1104 (9th Cir. 2003) (quoting *Marolt v. Alliant Techsystems, Inc.*, 146 F.3d 617, 620 (8th Cir. 1998)). Accordingly, the Court may

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[5] In improperly analyzing Sections 2.6 and 6.4 separately, Defendants offer shifting arguments to explain away Section 6.4. In their Motion, Defendants argue that Section 6.4 "is meant only to comply with the IRS's required minimum distribution rules." Def. Mot. at 9. In their Opposition (to the cross-motion), Defendants drop that contention and assert that Section 6.4 "was added to provide the Committee a layer of protection if . . . the Committee failed to start commencement of the annuity because the Terminated Vested Member's written request for commencement was lost in the mail." Def. Opp. at 3. The Court finds both arguments unpersuasive because they are not supported by the text of the 1988 Plan.

consider Defendants' new interpretation of the 1988 Plan but need not defer to it. Based on a plain reading of the 1988 Plan's language, the Court rejects Defendants' interpretation of Section 2.6 and finds that Sections 2.6 and 6.4, read together, gave Plaintiff the right to defer commencement of his pension benefit until age 70.

B. Plaintiff's Right to Defer Receipt of His Pension Benefit Is a Protected Optional Benefit Under ERISA § 1054(g) and I.R.C. § 411(d)(6).

The Court next considers whether Plaintiff's right to defer receipt of his pension benefit until age 70 is protected under ERISA's anti-cutback rule. The "anti-cutback rule is crucial to" ERISA's "central[] . . . object of protecting employees' justified expectations of receiving the benefits their employers promise them." *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743-44 (2004). "Nothing in ERISA requires employers to establish employee benefits plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan. ERISA does, however, seek to ensure that employees will not be left emptyhanded once employers have guaranteed them certain benefits." *Id.* at 743 (internal quotation marks omitted) (quoting *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)). The I.R.C. contains a "substantially identical" provision, *Heinz*, 541 U.S. at 746, which conditions eligibility for tax breaks on a pension plan's compliance with ERISA's anti-cutback rule. 26 § U.S.C. § 411(d)(6).

The anti-cutback rule provides that "[t]he accrued benefit of a participant under a plan may not be decreased by an amendment of the plan." 29 U.S.C. § 1054(g)(1). It further establishes that "a plan amendment which has the effect of . . . eliminating an optional form of benefit . . . shall be treated as reducing accrued benefits." *Id.* § 1054(g)(2)(B); *see also* *Auwarter v. Donohue Paper Sales Corp. Defined Ben. Pension Plan*, 802 F. Supp. 830, 838 (E.D.N.Y. 1992) ("ERISA § 204(g) . . . and I.R.C. § 411(d)(6) prohibit the retroactive reduction of benefits accrued by participants in a retirement plan."); *Heinz*, 541 U.S. at 744 ("[A]n amendment placing materially greater restrictions on the receipt of the benefit 'reduces' the benefit just as surely as a decrease in the size of the monthly payment."). Optional forms of benefit "exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative." 26 C.F.R. § 1.411(d)–4, Q & A–1(b). Thus, "different optional forms of benefit may result from differences in terms relating to the payment schedule, *timing, commencement*, medium of distribution (e.g., in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies." *Id.* (emphasis added).

Here, Plaintiff seeks to preserve his right under the 1988 Plan to defer receipt of benefit payments until he attains age 70. It seems apparent that this right is an "optional benefit" as defined by Treasury Regulation § 1.411(d)–4, Q & A–1(b) because it addresses both the "timing" and "commencement" of Plaintiff's benefits. *See* Ross v. Pension Plan for Hourly Emps of SFK Indus., Inc., 847 F.2d 329, 333 (6th Cir. 1988) ("An optional form of benefit is generally one that involves the power or right of an employee to choose the way in which payments due to him under a plan will be made or applied."). Defendants argue otherwise, claiming that the anti-cutback rule protects only "accrued benefits," not optional benefits, and that an accrued benefit is "determined under the plan . . . expressed in the form of an annual benefit commencing at the normal retirement age." Def. Opp. at 6-7 (citing 29 U.S.C. § 1054(g)(1) and 29 U.S.C. § 1002(23)(A)). Thus, Defendants argue that the right Plaintiff seeks to preserve is not a protected accrued benefit under the anti-cutback rule because it defers payment until age 70—ten years after Plaintiff's normal retirement age. *Id.* at 7. This argument misses the mark because, as explained above, the right to defer payment past normal retirement age is an optional form of benefit under the anti-cutback rule, which treats the elimination of an optional form of benefit the same way it does the elimination of an accrued benefit. *See* 29 U.S.C. § 1054(g)(2)(B) ("[A] plan amendment which has the effect of . . . *eliminating an optional form of benefit*, . . . *shall be treated as reducing accrued benefits*." (emphasis added)). Defendants do not explain why the Court should disregard the anti-cutback rule's plain text. Accordingly, the Court concludes that Plaintiff's deferral right is a protected form of optional benefit.

C. The 2017 Amendment Does Not Fall Under An Exception to ERISA's Anti-Cutback Rule.

Having determined that the 1988 Plan gave Plaintiff the right to defer commencement of his pension benefit until age 70 and that this deferral right is an optional form of benefit protected by ERISA's anti-cutback rule, the Court now reaches the crux of this case: whether the 2017 Amendment falls under an exception to the anti-cutback rule. ERISA explicitly authorizes the Secretary of the Treasury (Secretary) to make exceptions to the anti-cutback rule's broad mandate:

> The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or

> complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B)[, concerning an "optional form of benefit"].

Id. § 1054(g)(2)(B); *see also Tasker v. DHL Ret. Sav. Plan*, 621 F.3d 34, 39 (1st Cir. 2010) ("[T]he Treasury Department, acting under a lawful delegation of authority from Congress . . . has carved a number of exceptions out of the [anti-cutback] rule. Regulations lawfully promulgated by the Secretary of the Treasury . . . which interpret the anti-cutback rule, command an appreciable measure of judicial deference."). "Although the pertinent regulations refer only to the Internal Revenue Code version of the anti-cutback rule, they apply with equal force to ERISA § 204(g)." *Heinz*, 541 U.S. at 747.

The Secretary lawfully promulgated Regulation A–2, which addresses "Involuntary distributions":

> Q–2: To what extent may [anti-cutback rule] protected benefits under a plan be reduced or eliminated?
>
> A–2: . . . A plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such involuntary distribution is permitted under sections 411(a)(11) and 417(e).

26 C.F.R. § 1.411(d)–4, Q & A–2(b)(2)(v). Thus, in order to determine whether the involuntary distribution enacted by the 2017 Amendment was legal under Regulation A–2, the Court must analyze the extent to which that distribution was "permitted" under §§ 411(a)(11) and 417(e).

1. I.R.C. §§ 411(a)(11) and 417(e)

I.R.C. § 411(a)(11)(A) provides: "If the present value of any nonforfeitable accrued benefit exceeds $5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant." 26 U.S.C. § 411(a)(11)(A).

I.R.C. § 417(e)(1) states:

> A plan may provide that the present value of a qualified joint and survivor annuity[6] . . . will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11) [i.e., $5,000]. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

26 U.S.C. § 417(e)(1). I.R.C. § 417(e)(2) further clarifies this rule:

> If—
>
> (A) the present value of the qualified joint and survivor annuity . . . exceeds the amount that can be distributed without the participant's consent under section 411(a)(11) [i.e., $5,000], and

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[6] A qualified joint and survivor annuity (QJSA) is an annuity:

> (1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and
>
> (2) which is the actuarial equivalent of a single annuity for the life of the participant.

26 U.S.C. § 417(b). According to the IRS's official website, "[a] qualified plan like a defined benefit plan . . . must provide a QJSA to all married participants as the only form of benefit" absent consent from both the participant and the spouse. Internal Revenue Serv., *Retirement Topics–Qualified Joint and Survivor Annuity* (Sept. 28, 2021), https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-qualified-joint-and-survivor-annuity. There is no evidence in the Administrative Record that the Plan (which, as a pension plan, is a "defined benefit plan") did not provide its benefits in the form of a QJSA, nor that Plaintiff and his ex-wife opted for another form of benefit. Plaintiff confirmed that his ex-wife is a beneficiary under the 1988 Plan. *See* AR 376.

> (B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,
>
> the plan may immediately distribute the present value of such annuity.

26 U.S.C. § 417(e)(2)(A)-(B). Plaintiff argues that these sections do not permit the involuntary distribution of Plaintiff's benefit, but explicitly "prohibit the immediate distribution of pensions with a present value greater than $5,000 without the consent of the participant." Pltf. Mot. at 13.

2. Treasury Regulations §§ 1.411(a)–11 and 1.417(e)–1(b)(1)

Defendants do not address the text of I.R.C. §§ 411(a)(11) and 417(e), which are the provisions specifically identified in the Regulation A–2 exception. Instead, they rely on two Treasury Regulations, §§ 1.411(a)–11 and 1.417(e)–1(b)(1), which are promulgated under and implemented by, respectively, I.R.C. § 411(a)(11), *see* *Lyons v. Georgia-Pac. Corp. Salaried Emps. Ret. Plan*, 221 F.3d 1235, 1243 (11th Cir. 2000), and § 417(e), *see* *Eaton v. Onan Corp.*, 117 F. Supp. 2d 812, 841 (S.D. Ind. 2000).

Treasury Regulation § 1.411(a)–11 explains that, in general, I.R.C. § 411(a)(11) "restricts the ability of a plan to distribute any portion of a participant's accrued benefit without the participant's consent." 26 C.F.R. § 1.411(a)–11. Treasury Regulation § 1.411(a)–11(c)(4) provides the limited circumstance under which a benefit may be distributed *without* consent:

> **(4) Immediately distributable**. Participant consent is required for any distribution while it is immediately distributable, i.e., prior to the later of the time a participant has attained normal retirement age . . . or age 62. Once a distribution is no longer immediately distributable, a plan may distribute the benefit in the form of a QJSA in the case of a benefit subject to section 417 or in the normal form in other cases without consent.

26 C.F.R. § 1.411(a)–11(c)(4); *see also* *In re Pulley*, 111 B.R. 715, 744 (N.D. Ind. 1989) ("An accrued benefit is immediately distributable if any part of the benefit may be distributed to the participant before the later of normal retirement age or age 62.").

Similarly, Treasury Regulation § 1.417(e)–1(b)(1) states:

> Generally, plans may not commence the distribution of any portion of a participant's accrued benefit in any form unless the applicable consent requirements are satisfied. No consent of the participant or spouse is needed for distribution of a QJSA . . . after the benefit is no longer immediately distributable (after the participant attains (or would have attained if not dead) the later of normal retirement age . . . or age 62).

26 C.F.R. § 1.417(e)–1(b)(1). Defendants interpret these two Treasury Regulations to mean that "an involuntary distribution is permitted at the later of a participant's normal retirement age or age 62 under sections §§ 411(a)(11) and 417(e)." Def. Mot. at 12. According to Defendants, because Plaintiff's pension benefit was no longer immediately distributable at the later of Plaintiff's attainment of normal retirement age or age 62, the 2017 Amendment eliminating Plaintiff's right to defer commencement of his benefit payment past age 62 became a permissible involuntary distribution upon Plaintiff's attainment of age 62 in 2020, and therefore valid under Regulation A–2's exception to the anti-cutback rule, notwithstanding the fact that Plaintiff's accrued benefit exceeded $5,000. *Id.*

3. Statutory Construction

The parties present competing methods of determining whether the 2017 Amendment's involuntary distribution was "permitted" under I.R.C. §§ 411(a)(11) and 417(e), as it must be to fall within the exception to the anti-cutback rule set forth in Regulation A–2. In arguing that the 2017 Amendment was not permitted, Plaintiff relies on the two relevant I.R.C. sections themselves, while Defendants rely on the pair of Treasury Regulations interpreting those I.R.C. sections, §§ 1.411(a)–11 and 1.417(e).

Because the Court's "inquiry begins with the statutory text, and ends there as well if the text is unambiguous," the Court first looks to the text of the relevant I.R.C. sections. *In re Stevens*, 15 F.4th 1214, 1217 (9th Cir. 2021) (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004)). Section 411(a)(11), entitled "Restrictions on Certain Mandatory Distributions," states that a plan satisfies its requirements "only if" it provides that a benefit that "exceeds $5,000 . . . may not be immediately distributed without the consent of the participant." 26 U.S.C. § 411(a)(11)(A). Section 417(e)(1) allows a plan to allow the immediate distribution of an annuity "if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11)"—*i.e.,* $5,000. 26 U.S.C. § 417(e)(1). And § 417(e)(2) allows a plan to immediately distribute the present value of a QJSA with a present value that "exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)"—*i.e.*, $5,000—only if the participant and his or her spouse (or the surviving spouse if the participant has died) consent in writing. 26 U.S.C. § 417(e)(2).

The Court finds that these I.R.C. provisions, when considered for the express purpose described in Regulation A–2, are not ambiguous. They establish a clear rule that a plan may not immediately distribute a benefit that exceeds $5,000 without the consent of the participant (and of his or her spouse, in the case of a QJSA).

Defendants do not address the text of I.R.C. §§ 411(a)(11) and 417(e) in either their summary judgment papers or their supplemental brief. Defendants instead rely on the Treasury Regulations that interpret those sections, focusing on two subsections that establish a limited circumstance in which a benefit can be distributed without a participant's consent: when that benefit is "no longer immediately distributable," defined as when the participant attains "the later of normal retirement age . . . or age 62." 26 C.F.R. §§ 1.411(a)–11(c)(4), 1.417(e)–1(b)(1). Defendants assert that these subsections in the Treasury Regulations reflect the Treasury Department's view that a plan may be amended to allow for the involuntary distribution of a benefit, *even if* the benefit exceeds $5,000, as long as the benefit is "immediately distributable." Def. Supp. Brief at 4.

Defendants' argument misses the mark. The critical issue presented in this case is whether the 2017 Amendment falls under Regulation A–2's exception to the anti-cutback rule. This calls for an interpretation of Regulation A–2, which—by its plain terms—authorizes a plan amendment to allow for the involuntary distribution of accrued benefits only if such distribution is "permitted" under I.R.C. §§ 411(a)(11) and 417(e). The narrow question presented is thus straightforward: What involuntary distributions are permitted under I.R.C. §§ 411(a)(11) and 417(e)? Those sections provide an unambiguous answer, expressly providing that involuntary distributions are permitted only if the participant's benefit does not exceed $5,000 in value. That is the end of the inquiry here. The Court need not look to the Treasury Regulations to interpret I.R.C. §§ 411(a)(11) and 417(e) when those statutes clearly address the scope of the exception to the anti-cutback rule as defined by Regulation A–2.

Accordingly, the 2017 Amendment requiring Plaintiff to receive his pension benefit by age 62 does not qualify for Regulation A–2's exception to the anti-cutback rule.

4. Deference

The Court does not find Regulation A–2 or the related I.R.C. provisions (for the purposes referenced) to be ambiguous. But to the extent that there was any ambiguity in Regulation A–2, the Treasury Department has already addressed that issue in a Federal Register entry, promulgated by the IRS, titled "Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans." Subsection G states:

> *G. Benefits Protected From Reduction or Elimination*
>
> Section 411(d)(6) provides, in general, that a plan shall be treated as not satisfying the requirements of section 401(a) if the accrued benefit of a participant is decreased, or an optional form of benefit is eliminated, by an amendment of the plan. Section 1.411(d)-4, paragraph (b)(2)(v) of Q&A-2 provides that a plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such distribution is permitted under sections 411(a)(11) and 417(e). *In accordance with that provision, a plan may be amended for plan years beginning on or after August 6, 1997, to permit the involuntary distribution of an accrued benefit using a cash-out limit of $5,000*, with respect to benefits accrued before the amendment was adopted and effective. Such an amendment is permitted even if the plan, prior to amendment, did not permit involuntary distributions (as well as if the plan permitted involuntary distributions if the present value of the participant's benefit did not exceed the prior cash-out limit of $3,500). *Such an amendment will not violate the anti-cutback rules of section 411(d)(6).*

63 FR 70335-02, 70337 (Dec. 21, 1998) (emphasis added).

Subsection G further confirms the reading of the plain language of Regulation A–2: amending a plan to allow for the involuntary distribution of an accrued benefit is "permitted"—and does not violate the anti-cutback rule—only where the benefit has a value of $5,000 or less. The negative implication of Subsection G is that an involuntary distribution exceeding $5,000 violates the anti-cutback rule. Thus, even if there were any ambiguity requiring deference (which the Court does not find here),[7] the IRS has interpreted Regulation A–2's exception to the anti-cutback rule in the same way as the Court.

In short, the 2017 Amendment violates the anti-cutback rule because it is subject to it, and because there is no exception applicable here.[8]

IV. CONCLUSION

The 1988 Plan gave Plaintiff the right to defer commencement of his pension benefit payments until age 70. That right was an "optional form of benefit" protected from elimination by ERISA's anti-cutback rule and its parallel provision in the Internal Revenue Code, unless an exception applies. The 2017 Amendment eliminated Plaintiff's deferral right without Plaintiff's consent. Thus, the 2017 Amendment is an "involuntary distribution," and can only qualify for the

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[7] When a regulation is ambiguous, the relevant agency's interpretation of it is generally "of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Goffney v. Becerra*, 995 F.3d 737, 744 (9th Cir. 2021) (quoting *Bowles v. Seminole Rock & Sand Co*., 325 U.S. 410, 413–14 (1945)). That the IRS's interpretation appears in the Federal Register but not in the Code of Federal Regulations (CFR) is not an impediment to deference, as courts frequently defer to such agency interpretations of statutes and regulations. *See S.E.C. v. Phan*, 500 F.3d 895, 903–04 & n.10 (9th Cir. 2007) (affording "substantial deference" to Securities and Exchange Commission instruction published in Federal Register, but not codified in the CFR, as "an agency's published interpretation of its own regulations"); *see also Tibble v. Edison Int'l*, 729 F.3d 1110, 1122 (9th Cir. 2013) (deferring to the Department of Labor's legal interpretation of a rule announced through a preamble to a rule that was published in the Federal Register but not codified in the CFR), *vacated on other grounds*, 575 U.S. 523 (2015).

[8] Defendants also assert that the 2017 Amendment was not an illegal cutback of benefits because Plaintiff's accrued pension benefit did not become "less valuable," as defined in *Heinz*. Def. Mot. at 12; *citing* 541 U.S. at 745. This assertion ignores the fact that the right to defer receipt of annuity payments under the 1988 Plan is a valuable "optional benefit" protected from elimination (as previously discussed). 26 C.F.R. § 1.411(d)–4, Q & A–1(b). As *Heinz* explained, "an amendment placing materially greater restrictions on the receipt of the benefit 'reduces' the benefit just as surely as a decrease in the size of the monthly payment." 541 U.S. at 744.

exception to the anti-cutback rule set forth in Treasury Regulation A–2 "to the extent such involuntary distribution is permitted under sections 411(a)(11) and 417(e)." An involuntary distribution is permitted under I.R.C. §§ 411(a)(11) and 417(e) only if the value of the benefit being distributed is worth $5,000 or less.

The parties do not dispute that Plaintiff's annuity benefit exceeds $5,000 in value. As a result, the 2017 Amendment could not legally eliminate Plaintiff's right to defer commencement of his pension benefit payments until age 70, and Defendants' denial of Plaintiff's claim during the administrative process was improper. Therefore, the Court **GRANTS** Plaintiff's motion for summary judgment and **DENIES** Defendants' motion for summary judgment.

* * *

Plaintiff does not raise the issue of attorneys' fees and costs in his moving papers, but asks the Court to order the parties to meet and confer about such fees and costs in his proposed judgment. Accordingly, the Court **orders** the parties to meet and confer by not later than **March 10, 2022**. If the parties are unable to reach agreement, Plaintiff may file a properly supported motion for attorneys' fees under Federal Rule of Civil Procedure 54 not later than **March 17, 2022**. Should Plaintiff file such a motion, the Court will apply the five-factor test established by the Ninth Circuit in *Hummel v. S.E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980), to guide the Court's discretion to award reasonable attorney's fees under ERISA § 1332(g)(1). The Court will defer entry of final judgment in this matter until it adjudicates any Rule 54 motion filed by Plaintiff or the parties inform the Court that they have reached an agreement on attorney's fees.