

## LIST OF COMMENTERS (DOCKET NO. RM16-6-000)—Continued

Tacoma Power .....	Tacoma Power.
TVA .....	Tennessee Valley Authority.
Tri-State Generation .....	Tri-State Generation and Transmission Association.
Union of Concerned Scientists .....	Union of Concerned Scientists.
WIRAB .....	Western Interconnection Regional Advisory Body.

[FR Doc. 2016-28321 Filed 11-23-16; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-107424-12]

RIN 1545-BK95

#### Update to Minimum Present Value Requirements for Defined Benefit Plan Distributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would provide guidance on changes made by the Pension Protection Act of 2006 and would provide other modifications to these rules as well. These regulations would affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 23, 2017. Outlines of topics to be discussed at the public hearing scheduled for March 7, 2017, must be received by February 23, 2017.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-107424-12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-107424-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-107424-12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Neil S. Sandhu or Linda S.F. Marshall at (202) 317-6700; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 401(a)(11) of the Internal Revenue Code (Code) provides that, in order for a defined benefit plan to qualify under section 401(a), except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity. In the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a defined benefit plan must provide a qualified preretirement survivor annuity to the surviving spouse of such participant, except as provided under section 417.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. However, the last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 417(e)(1) provides that a plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if that present value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the qualified joint and survivor annuity or the

qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of a qualified joint and survivor annuity or the qualified preretirement survivor annuity only if the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.<sup>1</sup>

Section 417(e)(3)(B) of the Code, as amended by section 302 of the Pension Protection Act of 2006 (PPA '06), Public Law 109-280, 120 Stat. 780 (2006), provides that the term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (3)(D)).

Section 417(e)(3)(C) of the Code, as amended by section 302 of PPA '06, provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) of the Code for the month before the date of the distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are to be determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are to be determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan," as defined by section 411(a)(13)(C), is not treated as failing to meet the requirements of section 417(e)

<sup>1</sup> Under section 411(a)(11)(B), the same applicable mortality table and applicable interest rate are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation.

Section 1107(a)(2) of PPA '06 provides that a pension plan does not fail to meet the requirements of section 411(d)(6) by reason of a plan amendment to which section 1107 applies, except as provided by the Secretary of the Treasury. Section 1107 of PPA '06 applies to plan amendments made pursuant to the provisions of PPA '06 or regulations issued thereunder that are adopted no later than a specified date, generally the last day of the first plan year beginning on or after January 1, 2009.

Final regulations under section 417 relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements have not been amended to reflect PPA '06. The regulations, which were issued on August 22, 1988, were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103-465 (GATT).

Section 1.417(e)-1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)-1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)-1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a qualified preretirement survivor annuity, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Notice 2007-81, 2007-2 CB 899 (see 26 CFR 601.601(d)(2)(ii)(b)), provides guidance on the applicable interest rate.

Rev. Rul. 2007-67, 2007-2 CB 1047 (see 26 CFR 601.601(d)(2)(ii)(b)), provides guidance on the applicable mortality table<sup>2</sup> and the timing rules that apply to the determination of the applicable interest rate and the applicable mortality table.

The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 109-280 (120 Stat. 780), amended section 415(b)(2)(E)(v) to provide that the applicable mortality table under section 417(e)(3)(B) applies for purposes of adjusting a benefit or limitation pursuant to section 415(b)(2)(B), (C), or (D).

Sections 205(g), 203(e), and 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) contain rules that are parallel to Code sections 417(e), 411(a)(11), and 411(d)(6), respectively. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations apply for purposes of the Code and the corresponding provisions of ERISA.

In *West v. AK Steel Corporation Retirement Accumulation Pension Plan*, 484 F.3d 395 (6th Cir. 2007), the court held that a preretirement mortality discount could not be used in the computation of the present value of a participant's single-sum distribution under a cash balance plan if the death benefit under the plan was equal in value to the participant's accrued benefit under the plan. The court found that, if a participant's beneficiary is entitled to the participant's entire accrued benefit upon the participant's death before attainment of normal retirement age, the use of a mortality discount for the period before normal retirement age would result in a partial forfeiture of benefits in violation of the ERISA vesting rules that correspond to the rules of section 411(a). See also *Berger v. Xerox Corporation Retirement Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003); *Crosby v. Bowater, Inc. Ret. Plan*, 212 FRD. 350 (W.D. Mich. 2002), rev'd on other grounds, 382 F.3d 587 (6th Cir. 2004) (accrued benefits include not only retirement benefits themselves, but also death benefits which are directly related to the value of the retirement benefits). In *Stewart v. AT&T Inc.*, 354 Fed. Appx. 111 (5th Cir. 2009), however, the court held that a

preretirement mortality discount was appropriately applied to determine a single-sum distribution under a traditional defined benefit plan. The court distinguished *AK Steel* and *Berger* on the basis that the plans at issue in those cases did not provide for a forfeiture of the accrued benefit on the death of the participant before retirement, whereas the plan at issue in *Stewart* provided for such a forfeiture.

Final regulations (TD 9783) under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form were published by the Treasury Department and the IRS in the **Federal Register** on September 9, 2016 (81 FR 62359).

## Explanation of Provisions

### Overview

These proposed regulations would amend the current final regulations under section 417(e) regarding the minimum present value requirements of section 417(e)(3) in several areas. Specifically, the proposed regulations would update the regulations for changes made by PPA '06 and to eliminate certain obsolete provisions. The proposed regulations also contain a few other clarifying changes.

### Updates To Reflect Statutory and Regulatory Changes

The proposed regulations would update the existing regulatory provisions to reflect the statutory changes made by PPA '06, including the new interest rates and mortality tables set forth in section 417(e)(3) and the exception from the valuation rules for certain applicable defined benefit plans set forth in section 411(a)(13). The proposed regulations clarify that the interest rates that are published by the Commissioner pursuant to the provisions as modified by PPA '06 are to be used without further adjustment. In addition, the proposed regulations would eliminate obsolete provisions of the regulations relating to the transition from pre-1995 law to the interest rates and mortality assumptions provided by GATT. Furthermore, the proposed regulations make conforming changes to reflect the final regulations under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form.

<sup>2</sup> Notice 2008-85, 2008-2 CB 905, Notice 2013-49, 2013-32 IRB 127, Notice 2015-53, 2015-33 IRB 190, and Notice 2016-50, 2016-38 IRB 371, set forth the section 417(e)(3) applicable mortality tables for 2009 through 2017.

### Other Clarifying Changes

#### A. Treatment of Preretirement Mortality

The proposed regulations would include rules relating to the treatment of preretirement mortality discounts in determining the minimum present value of accrued benefits under the regulations to address the issue raised by *AK Steel* and *Berger* of whether a plan that provides a death benefit equal in value to the accrued benefit may apply a preretirement mortality discount for the probability of death when determining the amount of a single-sum distribution.

Section 411(a) generally prohibits forfeitures of accrued benefits. Under section 411(a)(1), an employee's rights in his accrued benefit derived from employee contributions must be nonforfeitable, and under section 411(a)(2), an employee's rights in his accrued benefit derived from employer contributions must become nonforfeitable in accordance with a vesting schedule that is specified in the statute. Section 411(a)(3)(A) provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

Section 411(a)(7)(A)(i) defines a participant's accrued benefit under a defined benefit plan as the employee's accrued benefit determined under the plan and, except as provided in section 411(c)(3), expressed in the form of an annual benefit commencing at normal retirement age. Section 1.411(a)-7(a)(1) defines a participant's accrued benefit under a defined benefit plan as the annual benefit commencing at normal retirement age if the plan provides an accrued benefit in that form. If a defined benefit plan does not provide an accrued benefit in the form of an annual benefit commencing at normal retirement age, § 1.411(a)-7(a)(1)(ii) defines the accrued benefit as an annual benefit commencing at normal retirement age which is the actuarial equivalent of the accrued benefit determined under the plan. The regulation further clarifies that the term "accrued benefits" refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits, such as incidental death benefits.

Section 411(d)(6)(A) prohibits a plan amendment that decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that a plan amendment that has the effect of

eliminating or reducing an early retirement benefit or retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits for this purpose. Section 1.411(d)-3(g)(2)(v) provides that a death benefit under a defined benefit plan other than a death benefit that is part of an optional form of benefit is an ancillary benefit. Section 1.411(d)-3(g)(6)(ii)(B) describes death benefits payable after the annuity starting date that are considered part of an optional form of benefit. Pursuant to § 1.411(d)-3(g)(14) and (15), section 411(d)(6) protected benefits do not include a death benefit under a defined benefit plan that is an ancillary benefit and not part of an optional form of benefit.

A death benefit under a defined benefit plan that is payable when the participant dies before attaining normal retirement age and before benefits commence is not part of the participant's accrued benefit within the meaning of section 411(a)(7). Accordingly, the anti-forfeiture rules of section 411(a) do not apply to such a death benefit. This is the case even if the amount of the death benefit is the same as the amount the participant would have received had the participant separated from service and elected to receive a distribution immediately before death. Moreover, such a death benefit is an ancillary benefit within the meaning of § 1.411(d)-3(g)(2)(v)—rather than a section 411(d)(6) protected benefit—and therefore can be eliminated by plan amendment (provided that a qualified preretirement survivor annuity for a surviving spouse is preserved, pursuant to section 401(a)(11)).

The minimum present value requirements of section 417(e)(3) do not take into account the value of ancillary benefits that are not part of the participant's accrued benefit under the plan. Consistent with this, § 1.417(e)-1(d)(1)(i) does not require ancillary death benefits to be taken into account in the required minimum present value calculation. Because questions have arisen regarding this rule, the proposed regulations would clarify that the probability of death under the applicable mortality table is generally taken into account for purposes of determining the present value under section 417(e)(3), without regard to the death benefits provided under the plan other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit (as described in § 1.411(d)-3(g)(6)(ii)(B)) for which present value is determined.

However, a different rule applies with respect to whether the probability of death under the applicable mortality table is taken into account for purposes of determining the present value with respect to the accrued benefit derived from contributions made by an employee. This is because an employee's rights in the accrued benefit derived from the employee's own contributions are nonforfeitable under section 411(a)(1), and the exception for death under section 411(a)(3)(A) to the nonforfeatability of accrued benefits does not apply to the accrued benefit derived from employee contributions. As a result, for purposes of determining the present value under section 417(e)(3) with respect to the accrued benefit derived from contributions made by an employee (that is computed in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

The proposed regulations include an example to illustrate the application of the minimum present value requirements of section 417(e)(3) in the case of a single-sum distribution of a participant's entire accrued benefit that consists both of an accrued benefit derived from employee contributions and an employer-provided accrued benefit. Consistent with the rules in these proposed regulations, the example illustrates that a single-sum distribution of the participant's entire accrued benefit in such a case must equal the sum of the minimum present value of the accrued benefit derived from employee contributions, determined under section 417(e)(3) (applying the special rules set forth in the preceding paragraph), and the minimum present value of the employer-provided accrued benefit, determined under section 417(e)(3). Note that Rev. Rul. 89-60, 1989-1 CB 113 (1989) suggests that it is sufficient for a single-sum distribution in such a case to merely equal the greater of the minimum present value of the accrued benefit derived from employee contributions and the minimum present value of the participant's entire accrued benefit. To the extent the guidance under Rev. Rul. 89-60 is inconsistent with the final regulations that adopt these proposed regulations, the regulations would

supersede the guidance in Rev. Rul. 89–60.

#### B. Social Security Level Income Options

Questions have arisen regarding whether the minimum present value requirements of section 417(e)(3) apply to a social security level income option. As noted above, § 1.417(e)–1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits.

A social security supplement is defined in § 1.411(a)–7(c)(4) as a benefit for plan participants that commences before and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. A social security supplement (other than a QSUPP as defined in § 1.401(a)(4)–12) is an ancillary benefit that is not a section 411(d)(6) protected benefit.

A social security level income option is an optional form of benefit (protected under section 411(d)(6)) under which a participant's accrued benefit is paid in the form of an annuity with larger payments in earlier years, before an assumed social security commencement age, to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. It is appropriate to subject a social security level income option to the rules of section 417(e)(3) because, when a participant's accrued benefit is paid as a social security level income option, a portion of the participant's accrued benefit (which may be substantial) is accelerated and paid over a short period of time until social security retirement age. Because the periodic payments under a social security level income option decrease during the lifetime of the participant and the decrease is not the result of the cessation of an ancillary social security supplement, § 1.417(e)–1(d)(6) does not provide an exception from the minimum present value requirements of section 417(e)(3) for such a distribution. These proposed regulations contain an example that illustrates this point.

#### C. Application of Required Assumptions to the Accrued Benefit

The proposed regulations would clarify the scope of the rule of § 1.417(e)–1(d)(1) under which the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit (with both values determined using the applicable interest rate and the applicable mortality table). The proposed regulations would require that the present value of any optional form of benefit cannot be less than the present value of the accrued benefit payable at normal retirement age, and would provide an exception for an optional form of benefit payable after normal retirement age to the extent that a suspension of benefits applies pursuant to section 411(a)(3)(B).

#### *Effective/Applicability Dates*

The changes under the proposed regulations are proposed to apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register**. Prior to this applicability date, taxpayers must continue to apply existing regulations relating to section 417(e), modified to reflect the relevant statutory provisions during the applicable period (and guidance of general applicability relating to those statutory provisions, such as Rev. Rul. 2007–67).

#### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the proposed regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS

request comments on all aspects of these proposed regulations. In addition, the Treasury Department and the IRS specifically request comments on whether, in the case of a plan that provides a subsidized annuity payable upon early retirement and determines a single-sum distribution as the present value of the early retirement annuity, the present-value determination should be required to be calculated using the applicable interest rate and the applicable mortality table applied to the early retirement annuity (or whether the requirement to have a minimum present value that is equal to the present value of the annuity payable at normal retirement age determined in accordance with section 417(e)(3) provides the level of protection for the participant that is required by section 417(e)(3)). See *Rybarczyk v. TRW*, 235 F.3d 975 (6th Cir. 2000).

All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing has been scheduled for March 7, 2017, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 23, 2017, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by February 23, 2017. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal authors of these regulations are Neil S. Sandhu and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department

participated in the development of these regulations.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

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

- 1. Revising paragraphs (d)(1)(i), (d)(2), (d)(3), (d)(4), and (d)(6).
- 2. Adding paragraph (d)(8)(vi).
- 3. Revising paragraph (d)(9).
- 4. Removing paragraph (d)(10).

The addition and revisions read as follows:

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

\* \* \* \* \*

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans*—(A) *In general.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable mortality table described in paragraph (d)(2) of this section and the applicable interest rate described in paragraph (d)(3) of this section, as determined for the month described in paragraph (d)(4) of this section. The present value of any optional form of benefit, determined in accordance with the preceding sentence, cannot be less than the present value of the accrued benefit payable at normal retirement age, except to the extent that, for an optional form of benefit payable after normal retirement age, the requirements for suspension of benefits under section 411(a)(3)(B) are satisfied. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(B) *Payment of a portion of a participant's benefit.* The rules of this paragraph (d)(1) apply with respect to a payment of only a portion of the accrued benefit in the same manner as these rules would apply to a distribution of the entire accrued

benefit. See paragraph (d)(7) of this section.

(C) *Special rules for applicable defined benefit plans.* See section 411(a)(13) and the regulations thereunder for an exception from the rules of section 417(e)(3) and this paragraph (d) that applies to certain distributions from certain applicable defined benefit plans.

\* \* \* \* \*

(2) *Applicable mortality table*—(i) *In general.* The applicable mortality table for a calendar year is the mortality table that is prescribed by the Commissioner in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. This mortality table is to be based on the table specified under section 430(h)(3)(A), but without regard to section 430(h)(3)(C) or (D).

(ii) *Mortality discounts*—(A) *In general.* Except as provided under paragraph (d)(2)(ii)(B) of this section, the probability of death under the applicable mortality table is taken into account for purposes of determining the present value under this paragraph (d) without regard to the death benefits provided under the plan (other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit, as described in § 1.411(d)–3(g)(6)(ii)(B), for which present value is determined).

(B) *Special rule for employee-provided benefit.* For purposes of determining the present value under this paragraph (d) with respect to the accrued benefit derived from employee contributions (that is determined in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

(3) *Applicable interest rate*—(i) *In general.* The applicable interest rate for a month is determined using the first, second, and third segment rates for that month under section 430(h)(2)(C), as modified pursuant to section 417(e)(3)(D) (and without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv)). The applicable interest rate is specified by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, and is applied under rules similar to the rules under § 1.430(h)(2)–1(b). Thus, for example, in determining the present

value of a straight life annuity, the first segment is applied with respect to payments expected to be made during the 5-year period beginning on the annuity starting date, the second segment rate is applied with respect to payments expected to be made during the 15-year period following the end of that 5-year period, and the third segment rate is applied with respect to payments expected to be made after the end of that 15-year period. The interest rates that are published by the Commissioner are to be used for this purpose without further adjustment.

(ii) *Examples.* The following examples illustrate the rules of paragraphs (d)(2) and (3) of this section.

*Example 1.* (i) Plan A is a non-contributory single-employer defined benefit plan with a calendar-year plan year, a one-year stability period coinciding with the calendar year, and a two-month lookback used for determining the applicable interest rate. The normal retirement age is 65, and all participant elections are made with proper spousal consent. Plan A provides for optional single sum payments equal to the present value of the participant's accrued benefit. Plan A provides that the applicable interest rates are the segment rates as specified by the Commissioner for the second full calendar month preceding the calendar year that contains the annuity starting date. The applicable mortality table is the table specified by the Commissioner for the calendar year that contains the annuity starting date.

(ii) Participant P retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment. P has an accrued benefit of \$2,000 per month payable as a life annuity beginning at the plan's normal retirement age of 65. The applicable mortality rates for 2017 apply. The applicable interest rates published by the Commissioner for November 2016 are 1.57%, 3.45%, and 4.39% for the first, second, and third segment rates, respectively. The deferred annuity factor calculated based on these interest rates and the applicable mortality table for 2017 is 10.931 for a participant age 60. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single-sum payment received by P cannot be less than \$262,344 (that is, \$2,000 × 12 × 10.931).

*Example 2.* (i) The facts are the same as for *Example 1* of this paragraph (d)(3)(ii), except that Plan A provides for mandatory employee contributions. Participant Q retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment of Q's entire accrued benefit. Q has an accrued benefit of \$2,000 per month payable as a life annuity beginning at Plan A's normal retirement age of 65, consisting of an accrued benefit derived from employee contributions determined in accordance with section 411(c)(2) (Q's employee-provided accrued benefit) of \$500 per month and an accrued benefit derived from employer contributions (Q's employer-provided accrued benefit) of \$1,500 per month.

(ii) Pursuant to paragraph (d)(2)(ii)(B) of this section, the single-sum payment used to settle Q's employee-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates described in paragraphs (d)(3)(i) and (d)(2)(ii) of this section, determined without taking the probability of death during the assumed deferral period into account. The deferred annuity factor calculated based on the interest and mortality rates specified in *Example 1* of this paragraph (d)(3)(ii) (taking the probability of death only after age 65 into account) is 11.266 for a participant age 60. To satisfy the requirement of section 417(e)(3) and this paragraph (d), the single-sum payment received by Q with respect to the employee-provided portion of the accrued benefit cannot be less than the minimum present value of \$67,596 (that is,  $\$500 \times 12 \times 11.266$ ).

(iii) The single-sum payment used to settle Q's employer-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates. However, for this purpose, Plan A is permitted to take the probability of death during the assumed deferral period into account. The single-sum payment received by Q with respect to the employer-provided portion of the accrued benefit cannot be less than \$196,758 (that is,  $\$1,500 \times 12 \times 10.931$ ).

(iv) The total single-sum payment received by Q cannot be less than the sum of the minimum present value of Q's employee- and employer-provided accrued benefits, or \$264,354 ( $\$67,596 + \$196,758$ ).

(4) *Time for determining interest rate and mortality table*—(i) *Interest rate general rule*. Except as provided in paragraph (d)(4)(v) or (vi) of this section, the applicable interest rate to be used for a distribution is the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iv) of this section) for the stability period (as described in paragraph (d)(4)(iii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Mortality table general rule*. The applicable mortality table to be used for a distribution is the mortality table that is published for the calendar year during which the stability period containing the annuity starting date begins.

(iii) *Stability period*. A plan must specify the period for which the applicable interest rate remains constant (the stability period). This stability

period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year. This same stability period also applies to the applicable mortality table.

(iv) *Lookback month*. A plan must specify the lookback month that is used to determine the applicable interest rate with respect to a stability period. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(v) *Permitted average interest rate*. A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average applicable interest rate with respect to the plan's stability period for the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average applicable interest rate with respect to a stability period is the applicable interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(v) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(vi) *Additional determination dates*. The Commissioner may prescribe, in guidance published in the Internal Revenue Bulletin, other times that a plan may provide for determining the applicable interest rate.

(vii) *Example*. The following example illustrates the rules of this paragraph (d)(4):

*Example*. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section, except that Plan A provides that the applicable interest rates are the rates for the third full calendar month preceding the beginning of the plan quarter that contains the annuity starting date. Plan A also provides that the applicable mortality table is the table specified by the Commissioner for the calendar year that contains the beginning of the stability period.

(ii) The segment interest rates that apply for annuity starting dates during the period beginning April 1, 2017 and ending June 30, 2017 are the segment rates for January 2017. This plan design permits the applicable interest rate to be fixed for each plan quarter and for the applicable interest rate for all distributions made during each plan quarter to be determined before the beginning of the plan quarter.

\* \* \* \* \*

(6) *Exceptions*—(i) *In general*. This paragraph (d) (other than the provisions relating to section 411(d)(6)

requirements in paragraph (d)(9) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that—

(A) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(B) Decreases during the life of the participant merely because of—

(1) The death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of the survivor annuitant); or

(2) The cessation or reduction of a social security supplement or qualified disability benefit (as defined in section 411(a)(9)).

(ii) *Example*. The following example illustrates the rules of this paragraph (d)(6).

*Example*. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section. Plan A also provides an optional distribution in the form of a Social Security level income option. Under this provision, the participant's benefit is adjusted so that a larger amount is payable until age 65, at which time it is reduced to provide a level income in combination with the participant's estimated social security benefit beginning at age 65. Participant R's reduced early retirement benefit payable as a straight life annuity benefit commencing at age 60 is \$1,300 per month (which is less than the actuarially equivalent benefit that would have been determined using the applicable interest and mortality rates under section 417(e)(3)) and R's estimated social security benefit is \$1,000 per month beginning at age 65.

(ii) Because the benefit payable under the social security level income option decreases at age 65 and the decrease is not on account of the death of the participant or a beneficiary or the cessation or reduction of social security supplements or qualified disability benefits, the benefits payable under the social security level income option are subject to the minimum present value requirements of section 417(e)(3). As illustrated in *Example 1* of paragraph (d)(3)(ii) of this section, the minimum present value of Participant R's benefits under section 417(e)(3) is \$262,344, which is based on the present value of R's accrued benefit, not R's benefit that would be payable as a straight life annuity at the annuity starting date.

(iii) The deferred annuity factor for a participant age 60 with lifetime benefits commencing at age 65, based on the November 2016 segment rates and the applicable mortality table for 2017, is 10.931. The corresponding temporary annuity factor to age 65 is 4.752. The minimum benefits payable to Participant R in the form of a social security level income option (with a decrease of \$1,000—equal to the participant's estimated social security benefit—occurring at age 65) are \$2,090.99 per month until age 65 and \$1,090.99 per month thereafter. Any

amounts less than this would have a present value smaller than the required amount of \$262,344, and thus would fail to satisfy the minimum present value requirement of section 417(e)(3).

\* \* \* \* \*

(8) \* \* \*

(vi) *Applicability date for provisions reflecting PPA '06 updates and other rules.* Paragraphs (d)(1) through (4) of this section apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register**. Prior to this applicability date, taxpayers must continue to apply the provisions of § 1.417(e)-1(d) as contained in 26 CFR part 1 as in effect immediately before publication of those final regulations, except to the extent superseded by statutory changes and guidance of general applicability relating to those statutory changes.

(9) *Relationship with section 411(d)(6)*—(i) *In general.* A plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section (including a plan amendment that changes the time for determining those assumptions) is generally subject to section 411(d)(6). However, for certain exceptions to the rule in the preceding sentence, see paragraph (d)(7)(iv) of this section, § 1.411(d)-4, Q&A-2(b)(2)(v) (with respect to plan amendments relating to involuntary distributions), and section 1107(a)(2) of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006) (PPA '06) (with respect to certain plan amendments that were made pursuant to a change to the Internal Revenue Code by PPA '06 or regulations issued thereunder).

(ii) *Section 411(d)(6) relief for change in time for determining interest rate and mortality table.* Notwithstanding the general rule of paragraph (d)(9)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (and, if the amendment changes the stability period described in paragraph (d)(4)(iii) of this section, the time for determining the applicable mortality table), including an indirect change as a result of a change in plan year, the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(9)(ii) are satisfied. If the plan amendment is effective on or after the date the amendment is adopted, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be

determined using the interest rate and mortality table provided under the plan determined at either the date for determining the interest rate and mortality table before the amendment or the date for determining the interest rate and mortality table after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate and mortality table determination dates resulting in the larger distribution for distributions with annuity starting dates occurring during the period beginning with the effective date and ending one year after the adoption date.

\* \* \* \* \*

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016-27907 Filed 11-23-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 267

[Docket ID: DOD-2016-OS-0079]

RIN 0790-AJ51

#### **Production of Official Records or Disclosure of Official Information in Proceedings Before Federal, State or Local Governmental Entities of Competent Jurisdiction**

**AGENCY:** National Reconnaissance Office, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth procedures for the National Reconnaissance Office (NRO) personnel to follow for the release of official information by NRO personnel in legal proceedings, through testimony, production of documents, or otherwise.

**DATES:** Comments must be received by January 24, 2017.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Lisa Miller, (703) 808-1060.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pursuant to DoD Directive 5105.23, "National Reconnaissance Office (NRO)," effective October 29, 2015 (available at <http://www.dtic.mil/whs/directives/corres/pdf/510523p.pdf>), the NRO was designated as a Defense Agency. This proposed regulation aligns with comparable regulations for other defense agencies. This rulemaking discusses procedures for NRO personnel to follow when asked to provide official testimony in a legal proceeding. It also informs members of the public of the procedures for official NRO documents, files, records or information or official testimony which could include:

(1) Any material contained in the files of the NRO;

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties while detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO. These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for official certification of copies of any documents.

These procedures discussed in this proposed rule apply to information requests associated with:

(1) State court proceedings, to include grand jury proceedings.

(2) Federal civil proceedings where the United States, NRO, or any other Federal Agency is not a party to the case; and

(3) State and local legislative and administrative proceedings.