

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9783]

RIN 1545-BJ55

Modifications to Minimum Present Value Requirements for Partial Annuity Distribution Options Under Defined Benefit Pension Plans**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These regulations change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit 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 single sum or other more accelerated form. These regulations affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans.

DATES:

Effective date: These regulations are effective on September 9, 2016.

Applicability date: These regulations apply to distributions with annuity starting dates in plan years beginning on or after on or after January 1, 2017. In addition, a taxpayer can elect to apply these regulations with respect to any earlier period.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu or Linda S. F. Marshall at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 417(e) of the Internal Revenue Code (Code). These final regulations amend § 1.417(e)-1 of the Treasury regulations.

Section 401(a)(11) of the Code provides that, in order for a defined benefit plan to qualify under section 401(a), and 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 (QJSA), as defined in section 417(b).

Section 417(e)(1) provides that a plan may provide that the present value of a

QJSA or a qualified preretirement survivor annuity (QPSA), as defined in 417(c), 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 QJSA or QPSA 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 that annuity only if the participant and the spouse of the participant (or if 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.¹ Section 417(e)(3)(B) and (C) define the terms "applicable mortality table" and "applicable interest rate," respectively.

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) 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 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).

Final regulations under section 417 relating to the QJSA and QPSA

¹ 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.

requirements were issued on August 22, 1988. The final regulations were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103-465 (108 Stat. 4809 (1994)).

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 QPSA, 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.

Sections 204(g) and 205(g) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA), contain rules that are parallel to Code sections 411(d)(6) and 417(e), 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 the case of a defined benefit plan that offers a single-sum distribution or other form of accelerated distribution as an optional form of benefit in addition to the required QJSA, many participants have been reluctant to elect lifetime payments to insure against unexpected longevity, choosing instead an accelerated distribution form in order to maximize their liquidity. However, participants who elect a single sum or other accelerated form of distribution may face greater challenges in protecting against the risk of outliving their retirement savings. The Treasury Department and the IRS believe that

many participants are better served by having the opportunity to elect to receive a portion of their retirement benefits in annuity form (which provides financial protection against unexpected longevity) while receiving accelerated payments for the remainder of their benefits to provide increased liquidity during retirement.

In order to permit 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, the IRS issued proposed regulations under section 417(e)(3) (77 FR 5454) on February 3, 2012, that would have modified existing final regulations regarding the minimum present value requirements for defined benefit plan distributions. A number of comments were received on the proposed regulations, and a public hearing was held on June 1, 2012. After consideration of the comments received, the Treasury Department and the IRS are issuing these final regulations to adopt the rules set forth in the proposed regulations with modifications in response to the comments received.

Explanation of Provisions

Treatment of Bifurcated Accrued Benefits

In order to facilitate the payment of benefits partly in the form of an annuity and partly as a single sum (or other accelerated form), this document amends the regulations under section 417(e) to permit plans to simplify the treatment of certain optional forms of benefit that are paid to a participant partly in the form of an annuity that is excepted from the minimum present value requirements of section 417(e)(3) pursuant to § 1.417(e)-1(d)(6) and partly in a more accelerated form. Like the proposed regulations, these final regulations provide rules under which the participant's accrued benefit can be bifurcated so that the minimum present value requirements of section 417(e)(3) and § 1.417(e)-1(d) apply to only the portion of the participant's accrued benefit that is paid in an accelerated form.

The proposed regulations would have provided for three different approaches to bifurcating the accrued benefit so that the minimum present value requirements apply to only a portion of the accrued benefit. Under the first approach in the proposed regulations, a plan could have provided for two separate portions of the accrued benefit that were determined without regard to any election of optional form of benefit and permitted a participant to select different distribution options with

respect to each of those portions of the accrued benefit. Under the second approach, a plan could have provided for proportionate benefits with respect to each distribution option equal to the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit. Finally, under the third approach, a plan could have provided for a specified amount to be distributed as a single sum, but only if the plan satisfied a minimum benefit requirement with respect to the distribution that was not paid in a single sum.

Commenters generally supported the adoption of the rules in the proposed regulations, but raised several specific issues. Several commenters stated that it was sometimes difficult to determine which approach for bifurcating the accrued benefit applied to a particular plan design. These commenters suggested that certain plan designs appeared to fit within more than one approach, while other plan designs that were consistent with the intent of the proposed regulations did not seem to fit within any approach. In response to comments received, the rules providing for the bifurcation of the accrued benefit have been simplified and clarified in these final regulations.

The final regulations combine the first two bifurcation approaches from the proposed regulations into a single, more broadly applicable rule. Under the rule in these final regulations, a plan is permitted to explicitly bifurcate the accrued benefit so that the plan provides that the requirements of § 1.417(e)-1(d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. This rule does not impose any requirements with respect to the distribution options for the remaining portion of the accrued benefit.

An alternative rule is provided in the final regulations under which a plan that distributes a specified single-sum amount to a participant satisfies the requirements of § 1.417(e)-1(d) with respect to that payment, provided the remaining portion of the participant's accrued benefit satisfies a minimum requirement. This rule is essentially the same as the third bifurcation approach from the proposed regulations. Under this alternative rule, the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the single-sum payment must be no less than the excess of: (1) The participant's total

accrued benefit expressed in that form; over (2) the annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table. Thus, the portion of the participant's accrued benefit that is settled by the payment of a specified single-sum amount is implicitly determined as the actuarial equivalent of that single-sum amount.

The regulations provide a number of rules of operation that apply to one or both of the rules for bifurcating the accrued benefit. In particular, the regulations provide that if a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined under the rules in these regulations, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and § 1.417(e)-1(d), even if the distribution options have the same annuity starting date. Thus, if one of those separate optional forms of benefit is exempt from the requirement to use the section 417(e)(3) assumptions, the plan is required to apply the section 417(e)(3) assumptions only to the other optional form of benefit. This would permit a plan to use its usual annuity equivalence factors for the annuity portion (rather than being required to make a special calculation of the annuity portion using the section 417(e)(3) assumptions). The approach set forth in these regulations is simpler than applying the section 417(e)(3) assumptions to the entire optional form of benefit, and yields an intuitive result that is consistent with plan sponsor and participant expectations.

The regulations provide that explicit bifurcation must be used in specified cases. One such case is the situation in which a plan has been amended to eliminate an optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date). Commenters indicated that it was unclear which bifurcation approach would apply to this situation under the proposed regulations. In response to these comments, the final regulations specify that if the amount of a distribution in an optional form of benefit to which § 1.417(e)-1(d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date, then the plan is not permitted to use the alternative rule under which the amount of the benefit that is settled by the single-sum payment is implicitly

determined but could use the explicit bifurcation rule in order to avoid application of section 417(e) to both optional forms of benefit. The implicit bifurcation rule also is not available in a situation in which a single-sum distribution is available to settle a participant's entire accrued benefit and the plan permits a portion of the benefit to be paid as a lump sum.

Under the regulations, if a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for an accelerated form of distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. This is necessary in order to determine the extent to which the early retirement benefit, retirement-type subsidy, optional form of benefit, or ancillary benefit applies with respect to the remaining portion of the accrued benefit. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

The regulations provide for limited section 411(d)(6) relief in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to these final regulations, the requirements of section 417(e)(3) need not apply to the distribution. In such a case, section 411(d)(6) is not violated solely because, in accordance with these final regulations, the plan is amended on or before December 31, 2017, to provide that the amount of the distribution described in the preceding sentence to which the requirements of section 417(e)(3) need not apply is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)-3(g)(4)) using the same actuarial assumptions that would apply to calculate the amount of a distribution in that same form of

benefit if the participant elected to receive the entire accrued benefit in that form.

The final regulations include a number of examples in order to illustrate the bifurcation rules of the regulations and the rules of operation with respect to these rules.

Effective/Applicability Date

These regulations are effective on September 9, 2016.

The changes under these regulations apply to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may apply these rules to earlier periods.

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 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, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 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. Redesignating paragraph (d)(1) as paragraph (d)(1)(i) and revising the heading of the newly redesignated paragraph (d)(1)(i).

■ 2. Adding a heading for paragraph (d)(1).

■ 3. In the first sentence of newly redesignated paragraph (d)(1)(i), removing "A defined benefit plan" and adding "Except as provided in section 411(a)(13) and the regulations thereunder, a defined benefit plan" in its place.

■ 4. Adding paragraph (d)(1)(ii).

■ 5. Revising paragraph (d)(7), the heading for paragraph (d)(8), and paragraph (d)(8)(i).

■ 6. Adding paragraph (d)(8)(v).

The additions 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.*

* * *

(ii) *Defined contribution plans.*

Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

* * * * *

(7) *Application to portion of a participant's benefit*—(i) *In general.*

This paragraph (d)(7) provides rules under which the requirements of this paragraph (d) apply to the distribution of only a portion of a participant's accrued benefit. Paragraph (d)(7)(ii) of this section provides rules for how a participant's accrued benefit may be bifurcated into separate components for purposes of applying this paragraph (d). Paragraph (d)(7)(iii) of this section provides rules of application. Paragraph (d)(7)(iv) of this section provides certain limited section 411(d)(6) relief, and paragraph (d)(7)(v) of this section provides examples of the application of the rules of this paragraph (d)(7).

(ii) *Bifurcation of accrued benefit*—(A) *Explicit plan-specified bifurcation.*

A plan is permitted to provide that the requirements of this paragraph (d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. For example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle a specified percentage of the participant's accrued benefit. As another example, a plan is permitted to provide

that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle the accrued benefit derived from contributions made by an employee. In both examples, the distribution must satisfy the requirements of this paragraph (d) with respect to the specified portion of the accrued benefit, and the remaining portion of the accrued benefit (the participant's total accrued benefit less the portion of the accrued benefit settled by the single-sum payment) can be paid in some other form of distribution that is available under the plan.

(B) *Distribution of specified amount.* A plan that provides for a distribution of a single-sum payment that is not described in paragraph (d)(7)(ii)(A) of this section satisfies the requirements of this paragraph (d) with respect to that distribution if the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the distribution is no less than the excess of—

(1) The participant's total accrued benefit expressed in that form; over

(2) The annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table.

(iii) *Rules of operation—(A) Multiple distribution options.* If a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined in accordance with paragraph (d)(7)(ii) of this section, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d), even if the distribution options have the same annuity starting date. Thus, if the exception from the requirements of section 417(e)(3) and this paragraph (d) that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the other optional form of benefit.

(B) *Repeated application of rule.* If a participant's accrued benefit has been bifurcated in accordance with paragraph (d)(7)(ii) of this section, then the provisions of paragraph (d)(7)(ii) of this section may be applied again to bifurcate the remaining accrued benefit.

(C) *Requirement to use explicit plan-specified bifurcation in certain cases—*

(1) *Section 411(d)(6)—protected optional form.* If the amount of a

distribution in an optional form of benefit to which this paragraph (d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date for an amendment that eliminates that optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date), then the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(2) *Single-sum available with respect to entire accrued benefit.* If a plan provides that a single-sum distribution is available to settle a participant's entire accrued benefit, then, in order to also provide for a distribution in the form of a single-sum payment that settles only a portion of a participant's accrued benefit, the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(D) *Application of different factors to different portions of the accrued benefit.* If a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for a distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

(iv) *Limited section 411(d)(6) anti-cutback relief.* This paragraph (d)(7)(iv) applies in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to this paragraph (d)(7), the requirements of section 417(e)(3) and this paragraph (d) need not apply to the distribution. In such a case, section 411(d)(6) is not violated merely because,

in accordance with this paragraph (d)(7), the plan is amended on or before December 31, 2017, to provide that the amount of a distribution described in the preceding sentence is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)-3(g)(4)) using the same actuarial assumptions that apply to calculate the amount of a distribution in the same form of benefit that is made to settle the participant's entire accrued benefit.

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: The taxpayers elect to apply the rules of this paragraph (d)(7) in 2016; each plan is a noncontributory defined benefit plan with a calendar-year plan year and a normal retirement age of age 65; a one-year stability period coinciding with the calendar year and a two-month lookback are used for determining the applicable interest rate; and all participant elections are made with proper spousal consent. The November 2015 segment rates are 1.76%, 4.15% and 5.13%.

Example 1. (i) Plan A offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but not less than the present value of the participant's accrued benefit payable at normal retirement age) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan A permits a participant to elect to receive a percentage of the accrued benefit as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire benefit were paid as a single sum by the percentage of the accrued benefit settled by the single-sum payment.

(ii) Participant S retires at age 62 in 2016, with an accrued benefit of \$1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of \$1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of \$168,516 (based on the applicable interest and mortality rates under section 417(e), which are the November 2015 segment rates and the 2016 applicable mortality table), or a 100% joint and survivor annuity of \$850 per month (based on the plan's actuarial equivalence factors). Participant S elects to receive 25% of the accrued benefit in the form of a single-sum payment and the remaining 75% of the

accrued benefit as a 100% joint and survivor annuity.

(iii) Participant S receives a single-sum payment with respect to 25% of the accrued benefit. Accordingly, this single-sum payment is equal to 25% of the full single-sum amount, or \$42,129. The remaining portion of the accrued benefit is 75% of the total accrued benefit, or \$750 per month payable as a straight life annuity at normal retirement age.

(iv) To settle the remaining portion of the accrued benefit, in addition to the single-sum payment of \$42,129, Participant S receives a 100% joint and survivor annuity in the amount of \$637.50 per month, which is determined by applying the plan's unreduced early retirement and actuarial equivalence factors to the remaining portion of the accrued benefit of \$750 per month payable as a straight life annuity at normal retirement age. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 2. (i) Plan B is a contributory defined benefit plan that permits a participant to elect a single sum distribution equal to the participant's employee contributions, accumulated with interest, with the remainder payable as an annuity. Plan B provides that the probability of death before normal retirement age is not taken into account for purposes of determining actuarial equivalence between the single-sum payment and an annuity at normal retirement age. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 (determined without taking mortality before age 65 into account) is 10.209.

(ii) Participant T retires at age 60 in 2016 with an accrued benefit of \$1,500 per month payable as a straight life annuity commencing at normal retirement age. For benefits commencing at age 60, Plan B provides for an early retirement reduction factor of 75% and an actuarial equivalence factor of 98% for adjusting a straight life annuity to a 10-year certain and life annuity, neither of which is based on the applicable interest and mortality rates under section 417(e)(3). Participant T's benefit commencing at age 60 in the form of a 10-year certain and life annuity would be $\$1,500 \times 75\% \times 98\% = \$1,102.50$ per month. Participant T elects to receive a single sum payment of \$32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and life annuity.

(iii) The single-sum payment elected by Participant T is a distribution that is determined by reference to Participant T's contributions and interest, and not by reference to a specified portion of the participant's accrued benefit. Therefore, the single-sum payment is not described in paragraph (d)(7)(ii)(A) of this section. In order to satisfy paragraph (d)(7)(ii)(B) of this section, the portion of the participant's accrued benefit that is not settled by the single-sum payment must be no less than the excess of (A) the participant's total accrued

benefit over (B) the annuity that is actuarially equivalent to the single-sum payment, (determined using the applicable interest and mortality rates under section 417(e)(3) as applicable), both expressed in the normal form of benefit commencing at normal retirement age. The amount of that actuarially equivalent annuity is determined by dividing Participant T's single-sum payment of \$32,000 by the deferred annuity factor for lifetime payments commencing at age 65 under the terms of Plan B (10.209, not considering mortality for the deferral period) and dividing by 12 for an actuarially equivalent monthly benefit commencing at age 65 of \$261.21. Thus, in order to satisfy paragraph (d)(7)(ii)(B) of this section, the remaining portion of T's accrued benefit must be at least \$1,238.79 per month ($\$1,500.00 - \261.21) payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 cannot be less than \$910.51 per month ($\$1,238.79 \times 75\% \times 98\%$). Participant T receives this in addition to the single-sum payment of \$32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

(v) If, instead, Plan B's terms had provided for a single-sum payment equal to the present value of the participant's employee-provided accrued benefit as determined under section 411(c)(3), then the plan is determining the single-sum payment as the present value of a specified portion of the accrued benefit. In such a case, the plan is using explicit bifurcation as described in paragraph (d)(7)(ii)(A) of this section and the single-sum payment would have to be set equal to the present value, determined under Plan B's terms, of T's employee-provided accrued benefit (which may or may not be equal to T's accumulated contributions and interest, depending on the plan's terms). The remaining annuity benefit payable to Participant T would have been based on an accrued benefit equal to \$1,500 per month minus the amount of T's employee-provided accrued benefit.

Example 3. (i) The facts are the same as in *Example 2* of this paragraph (d)(7)(v), except that Plan B also offers a single-sum payment option with respect to a participant's entire benefit. The single-sum payment is determined as the present value of the participant's early retirement benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632. Under the terms of the plan, the early retirement benefit payable as a straight life annuity to Participant T at age 60 with respect to T's full accrued benefit is \$1,125 ($\$1,500 \times 75\%$), and the corresponding single-sum amount payable to

T is $\$1,125 \times 14.632 \times 12 = \$197,532$. (Note that this amount is larger than the age-60 present value of T's accrued benefit without taking mortality before age 65 into account, $\$1,500 \times 10.209 \times 12 = \$183,762$.) Participant T elects to receive a partial single-sum payment of \$32,000, equal to T's accumulated contributions with interest and to take the remaining accrued benefit in the form of a 10-year certain and life annuity commencing at age 60.

(ii) Because the plan also provides for a single-sum payment option with respect to a participant's entire benefit, pursuant to paragraph (d)(7)(iii)(C)(2) of this section the partial single-sum payment must be determined pursuant to the explicit bifurcation rules of paragraph (d)(7)(ii)(A) of this section.

(iii) The portion of the participant's accrued benefit that is settled by the single-sum payment of \$32,000 is determined as the amount that bears the same ratio to the total accrued benefit as that single-sum payment bears to the single-sum payment with respect to the entire accrued benefit ($(\$32,000 + \$197,532) \times \$1,500$), which is \$243 per month payable as a straight life annuity at normal retirement age. Thus, the remaining portion of the accrued benefit is \$1,257.00 per month payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 is \$923.90 per month ($\$1,257 \times 75\% \times 98\%$). Participant T receives this benefit in addition to the single sum payment of \$32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 4. (i) Plan C was amended to freeze benefits under a traditional defined benefit formula as of December 31, 2016, and to provide benefits under a cash balance formula beginning January 1, 2017. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2016, and the portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula.

(ii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C provides for an explicitly bifurcated accrued benefit because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of

section 417(e)(3) and this paragraph (d). Therefore, whether a participant elects to receive a single-sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2016, is subject to the minimum present value requirements of section 417(e)(3).

Example 5. (i) The facts are the same as in *Example 4* of this paragraph (d)(7)(v), except that Plan C also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of that portion as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire cash balance portion were paid as a single sum by the percentage of the cash balance portion settled by the single-sum payment. Participant W retires at age 65, with an accrued benefit under the traditional defined benefit formula (earned as of December 31, 2016) of \$500 per month payable as a straight life annuity at normal retirement age and a cash balance hypothetical account balance of \$45,000. Based on Plan C's actuarial equivalence factors, Participant W's accrued benefit derived from the cash balance hypothetical account is \$320 per month, payable as a straight life annuity at normal retirement age. Participant W elects to receive $\frac{1}{3}$ or \$15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a straight life annuity.

(ii) Under the analysis set forth in *Example 4* of this paragraph (d)(7)(v), Plan C provides for an explicitly bifurcated accrued benefit with respect to the traditional defined benefit portion and the cash balance portion because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C also provides for an explicitly bifurcated accrued benefit with respect to the cash balance benefit because the plan provides that a distribution in the form of a single-sum payment is made to settle a specified percentage of the cash balance benefit. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the annuity selected by Participant W with respect to the cash balance benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, in accordance with paragraph

(d)(7)(ii)(A) of this section, $\frac{1}{3}$ of the cash balance hypothetical account is settled by the distribution paid out as a single sum (that is, \$15,000 ÷ \$45,000). After the single-sum payment, the remaining portion of the accrued benefit derived from the cash balance account is $\frac{2}{3}$ of the initial accrued benefit derived from the cash balance account, or a straight life annuity at normal retirement age of \$213.33 per month ($\frac{2}{3} \times \320).

(iv) To settle the remaining portion of the entire accrued benefit (the portion of the benefit attributable to service as of December 31, 2016 plus the remaining portion of the cash balance benefit), Participant W receives a monthly life annuity of \$713.33 per month payable as a straight life annuity at normal retirement age (equal to the \$500 straight life annuity at normal retirement age earned as of December 31, 2016 plus the remaining benefit derived from the cash balance portion of a straight life annuity payable at normal retirement age of \$213.33 per month). Participant W's election to receive a single-sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant W's distribution is subject to the minimum present value requirements of section 417(e)(3).

Example 6. (i) Plan D permits participants to elect a single-sum payment of up to \$10,000 with the remaining benefit payable in the form of an annuity. Participant X retires in 2016 at age 55 with an accrued benefit of \$1,000 per month payable as a straight life annuity at normal retirement age. Participant X is eligible for an unreduced early retirement benefit of \$1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant X can receive an immediate benefit in the form of a 100% joint and survivor annuity of \$800 per month. Participant X elects to receive a single-sum payment of \$10,000, with the balance of the benefit payable as a 100% joint and survivor annuity beginning at age 55. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 7.602.

(ii) Plan D provides for a single-sum distribution of a portion of the participant's accrued benefit but, because the plan initially specifies the amount of the single-sum distribution (rather than the portion of the accrued benefit that is being settled by that distribution), Plan D is described in paragraph (d)(7)(ii)(B) of this section. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the joint-and-survivor annuity selected by Participant X are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d).

(iii) A straight life annuity of \$109.62 per month payable at normal retirement age is actuarially equivalent to the \$10,000 single-sum payment, determined using the

applicable mortality table for 2016 and the November 2015 segment rates ($\$10,000 \div 12 \div 7.602$). Therefore, pursuant to paragraph (d)(7)(ii)(B) of this section, in order to satisfy this paragraph (d) the remaining portion of the accrued benefit after the single-sum payment of \$10,000 must be no less than \$890.38 per month payable as a straight life annuity at normal retirement age (\$1,000.00 – \$109.62).

(iv) Based on Plan D's early retirement and optional form factors, in order to satisfy this paragraph (d), the annuity benefit payable to Participant X in the form of a 100% joint-and-survivor annuity beginning at age 55 must be no less than \$712.30 per month ($\$890.38 \times .8$). Participant X receives this benefit in addition to the single sum payment of \$10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 7. (i) Plan E provides for an unreduced early retirement benefit for participants who have met certain age and service requirements. Prior to amendment, Plan E permitted participants to elect a single-sum payment equal to the present value of the participant's unreduced early retirement benefit, determined using the applicable interest rate and applicable mortality table under section 417(e)(3). Plan E did not permit participants to elect a single-sum payment with respect to only a portion of their benefits. Effective December 31, 2012, Plan E was amended to eliminate the single-sum payment with respect to benefits accrued after that date.

(ii) Participant Y retires on December 31, 2016, at age 60, after meeting Plan E's age and service requirements for an unreduced early retirement benefit. Participant Y's accrued benefit is \$1,000 per month payable as a straight life annuity commencing at normal retirement age, of which \$800 per month was accrued as of December 31, 2012. Participant Y elects to take a single-sum payment based on the benefit accrued as of December 31, 2012, with the remainder paid as a lifetime annuity commencing at age 60. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632, so Y's single-sum payment is $\$800 \times 12 \times 14.632 = \$140,467.20$.

(iii) In accordance with paragraph (d)(7)(iii)(C)(1) of this section, Plan E provides for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section. Therefore, Participant Y must receive an annuity of \$200 earned after December 31, 2012 in addition to the single-sum payment of \$140,467. Plan E is not permitted to use the approach described in paragraph (d)(7)(ii)(B) of this section to reduce or eliminate the \$200 annuity earned after December 31, 2012.

(8) *Effective/applicability date*—(i) *In general.* Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity

starting dates in plan years beginning on or after January 1, 1995.

* * * * *

(v) *Effective date for special rules applicable to the payment of a portion of a participant's benefit.* Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may elect to apply the rules of paragraph (d)(7) of this section to earlier periods.

* * * * *

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: August 3, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016-21393 Filed 9-8-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2016-0829]

RIN 1625-AA08

Special Local Regulation; Louisville Dragon Boat Festival, Ohio River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Louisville Dragon Boat Festival on the Ohio River, from mile marker 603.0 and ending at 603.5. This rule is effective from 3 p.m. to 7:30 p.m. on September 9, 2016 and from 7 a.m. to 4:00 p.m. on September 10, 2016. During the enforcement period, no vessel may transit this regulated area unless registered with the sponsor as a participant or an official patrol vessel, or unless specifically authorized by the Captain of the Port Ohio Valley.

DATES: The regulations in 33 CFR 100.801, Table No. 1, Line no. 12 will be enforced for the Louisville Dragon Boat Festival as identified in the **SUPPLEMENTARY INFORMATION** section below with dates and times.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email James Robinson, Sector Ohio Valley, U.S. Coast Guard at telephone 502-779-

5347, email James.C.Robinson@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the Louisville Dragon Boat Festival listed in 33 CFR 100.801, Table no. 1, Line no. 12, from 7 a.m. to 5:30 p.m. on September 9, 2016 and from 7 a.m. to 5:30 p.m. on September 10, 2016. This action is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the Louisville Dragon Boat Festival. These regulations can be found in the Code of Federal Regulations, under 33 CFR 100.801. During the enforcement period no vessel may transit this regulated area unless registered with the sponsor as a participant or official patrol vessel, or unless authorized by the Captain of the Port (COTP). If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR part 100 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide the maritime community with advanced notification of this enforcement period via Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNM). If the COTP Ohio Valley determines that the special local regulation need not be enforced for the full duration, a BNM to grant general permission to enter the regulated area may be used.

Dated: September 6, 2016.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016-21743 Filed 9-8-16; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2016-0718]

Special Local Regulations; Cumberland River Dragon Boat Festival, Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the “Cumberland River Dragon Boat

Festival” on the Cumberland River from mile marker 190.0 to mile marker 192.0 on September 10, 2016, to provide for the safety of life on these navigable waters during the Cumberland River Dragon Boat Festival. Our regulation for Recurring Marine Events in Captain of the Port Ohio Valley Zone identifies the regulated area for this event. During the enforcement period, no vessel may enter into, transit through or anchor in the regulated area unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: The regulations in 33 CFR 100.801, Table 1, no. 34, will be enforced from 5 a.m. until 5 p.m., on September 10, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Ashley Schad, Coast Guard Marine Safety Detachment Nashville at 615-736-5421 or Ashley.M.Schad@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.801, Table 1, no. 34 from 5 a.m. until 5 p.m. on September 10, 2016, for the “Cumberland River Dragon Boat Festival” on the Cumberland River between mile markers 190.0 and 192.0. This action is being taken to provide for the safety of life on navigable waterways during the event. Our regulation for Recurring Marine Events in Captain of the Port Ohio Valley Zone, § 100.801, Table 1, no. 34 specifies the location of the regulated area for this 2 mile bank to bank course. As provided in § 100.801, during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Ohio Valley (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 5 U.S.C. 552(a), and 33 U.S.C. 1233. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

Dated: September 6, 2016.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016-21774 Filed 9-8-16; 8:45 am]

BILLING CODE 9110-04-P