

Request for Comments Containing Suggestions for Future Proposed Regulations Concerning Permitted Elimination of Optional Forms of Benefit from Defined Benefit Plans

Notice 2002-46

The Internal Revenue Service and the Treasury Department request comments on regulations that are expected to be proposed under § 411(d)(6) of the Internal Revenue Code concerning the elimination of optional forms of benefit from defined benefit plans, including the types of situations in which the retention of particular optional forms of benefit under a defined benefit plan results in significant burdens and complexities for sponsors of retirement plans and for participants and the conditions under which these optional forms of benefit are of de minimis value to participants.

BACKGROUND

Section 411(d)(6) generally provides that a plan is treated as not satisfying the requirements of § 411 if the accrued benefit of a participant is decreased by a plan amendment.¹ Under § 411(d)(6)(B), a plan amendment that eliminates or reduces an early retirement benefit, a retirement-type subsidy, or an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, § 411(d)(6)(B) permits the Secretary of Treasury to issue regulations that permit the elimination of optional forms of benefit. Pursuant to this authority, regulatory exceptions to the application of § 411(d)(6) to optional forms of benefit have been developed in the past to address certain specific practical problems and to permit elimination of most optional forms of benefit in many defined contribution plans. See A-2 and A-10 of §1.411(d)-4 of the Income Tax Regulations.

Prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), 115 Stat. 38 (2001), the authority to permit elimination of an optional form of benefit did not apply if the optional form constituted an early retirement benefit or retirement-type subsidy. EGTRRA amended § 411(d)(6)(B) to provide for the Secretary of Treasury to issue regulations under which § 411(d)(6)(B) would not apply to any plan amendment which reduces or eliminates benefits or subsidies that create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis

¹Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, (88 Stat. 829), provides a parallel rule to § 411(d)(6)(B) of the Internal Revenue Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to provide exceptions to this parallel ERISA requirement. Thus, Treasury regulations issued under § 411(d)(6)(B) of the Internal Revenue Code apply as well for purposes of § 204(g)(2) of ERISA.

manner. Under section 645(b)(3) of EGTRRA, these regulations are to be issued by December 31, 2003 and are to apply to plan years beginning after December 31, 2003 or an earlier date.

COMMENTS REQUESTED

The Service and Treasury intend to issue proposed regulations under § 411(d)(6) of the Code with respect to optional forms of benefit under defined benefit plans. Consequently, comments are requested on which optional forms of benefit (including early retirement benefits and retirement-type subsidies) should be permitted to be eliminated and the circumstances under which they should be permitted to be eliminated, consistent with § 411(d)(6)(B) as amended by EGTRRA. In particular, comments are requested on when particular optional forms of benefit (whether or not subsidized) result in significant burdens and complexities for sponsors of retirement plans and for participants and when these optional forms of benefit are of de minimis value to a participant. Comments are also requested on which optional forms of benefit should remain protected. Finally, comments are requested on any other issues relating to the treatment of optional forms of benefit under defined benefit plans under § 411(d)(6) on which guidance is needed.

The authority to provide exceptions to the restrictions of § 411(d)(6) does not apply to other requirements of the Internal Revenue Code. Thus, for example, the upcoming regulations will not permit a defined benefit plan to be amended to eliminate a distribution form required by §§ 401(a)(11) and 417 and will not affect the requirements of § 401(a)(31) (relating to direct rollovers).

Comments should be submitted by September 30, 2002, in writing, and should reference Notice 2002-46.

Comments may be submitted to CC:ITA:RU (Notice 2002-46), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 5 p.m., Monday through Friday to: CC:ITA:RU (Notice 2002-46), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. Alternatively, comments may be submitted via the Internet at Notice.Comments@irs.counsel.treas.gov. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal authors of this notice are Linda Marshall of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities) and Andrew Zuckerman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, contact the Employee Plans taxpayer assistance telephone service between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday by calling 1-877-829-5500 (a toll-free number). Ms.

Marshall can be reached at (202) 622-6030 and Mr. Zuckerman can be reached at (202) 283-9655 (not toll-free numbers).