

DISTRIBUTION PROVISIONS [5-24-01]

42. Document Provision:

Statement of Requirement: Definite benefit,
IRC §401(a)(25),
§411(a)(11), §417(e)(3);
Regs. §1.401-1(b)(1)(i),
§1.411(a)-(11)(d),
§1.417(e)-1(d);
Rev. Rul. 79-90.

Sample Plan Language:

Section 1. Except to the extent a participant's benefits are suspended in accordance with the suspension of benefits rules in section ____ of the plan, the amount of any form of benefit under the terms of this plan will be the actuarial equivalent of the participant's accrued benefit in the normal form commencing at normal retirement age.

(Note to reviewer: The blank in the preceding paragraph should be filled in with the section number of the plan corresponding to LRM #55.)

Actuarial equivalence will be determined on the basis of the interest rate and mortality table specified in the adoption agreement. In the case of a plan that provides for the disparity permitted under section 401(l), if benefits commence to a participant at an age other than normal retirement age, the participant's benefit will be adjusted in accordance with section ____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #27B.)

Notwithstanding the preceding paragraph, for purposes of determining the amount of a distribution in a form other than an Annual Benefit that is nondecreasing for the life of the participant or, in the case of a qualified pre-retirement survivor, the life of the participant's spouse; or that decreases during the life of the participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the Annual Benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified

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disability payments, actuarial equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under section 417(e), if it produces a benefit greater than that determined under the preceding paragraph.

The preceding two paragraphs will not apply to the extent they would cause the plan to fail to satisfy the requirements of section ____ or ____ of the plan.

(Note to reviewer: The blanks above should be filled in with the plan section numbers corresponding to LRM #40 and LRM #102.)

Section 2. The applicable interest rate is the rate of interest on 30-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified in the adoption agreement. The lookback month applicable to the stability period is the first, second, third, fourth, or fifth calendar month preceding the first day of the stability period, as specified in section _____ of the adoption agreement. The stability period is the successive period of one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year, as specified in section _____ of the adoption agreement, that contains the annuity starting date for the distribution and for which the applicable interest rate remains constant.

Notwithstanding the election by the employer in section _____ of the adoption agreement, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the participant's distribution would be reduced.

(Note to reviewer: The blanks above should be filled in with the corresponding adoption agreement section numbers at the end of this LRM #42.)

Section 3. The section 417 applicable mortality table is set forth in Rev. Rul. 95-6, 1995-1 C.B. 80.

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(Note to reviewer: The sponsor may include language that provides for a reduction to the post-normal retirement age benefit accrual otherwise required under section 411(b)(1)(H) of the Code to the extent permitted under Proposed Regulations 1.411(b)-2(b)(4). But see LRM #51 for special rules on the interaction of certain actuarial increases with section 411(b)(1)(H).)

Sample Adoption Agreement Language:

A. Except as provided in section ____ of the plan, actuarial equivalence will be determined based on the following interest and mortality assumptions:

(Note to reviewer: The blank above should be filled in with the plan section number corresponding to LRM #42.)

Interest rate: _____% (must be between 7 ½% & 8 ½% if the plan provides for permitted disparity under section 401(l) of the Internal Revenue Code)

Mortality table: _____ (must be standard mortality table as described in section 1.401(a)(4)-12 of the Income Tax Regulations if the plan provides for permitted disparity under section 401(l) of the Internal Revenue Code)

B. For purposes of the time for determining the applicable interest rate, the stability period under the plan is:

() one calendar month

() one plan quarter

() one calendar quarter

() one plan year

() one calendar year

The lookback month, relating to the stability period under the plan, is the:

() first

() second

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() third

() fourth

() fifth

calendar month preceding the first day of the stability period.

C. The provisions of section _____ and section _____ relating to the applicable interest rate and applicable mortality table respectively, shall apply to distributions in plan years beginning after

_____ (this date must be earlier than the first day of the first plan year beginning after December 31, 1999).

(Note to reviewer: The first two blanks should be filled in with the section numbers of the plan corresponding to sections 2 and 3, respectively, of LRM #42.)