

**MEMO# 13099**

January 29, 2001

# **IRS PROPOSED REGULATIONS ADDRESS TIMING OF WRITTEN EXPLANATIONS OF ANNUITY BENEFITS**

[13099] January 29, 2001 TO: PENSION COMMITTEE No. 9-01 RE: IRS PROPOSED REGULATIONS ADDRESS TIMING OF WRITTEN EXPLANATIONS OF ANNUITY BENEFITS The Internal Revenue Service has issued proposed regulations under Code section 417(a)(7), which address the timing of written explanations regarding the qualified joint and survivor annuity (QJSA) form of distribution. Specifically, the proposed regulations would allow a written explanation of a QJSA to be provided to a participant on or after the "annuity starting date," provided certain conditions are met. Comments on the proposed amendments and requests for a public hearing must be received by April 17, 2001. Code section 417 contains an exception to section 401(a)(11), which requires that distributions from defined benefit plans (and certain types of defined contribution plans) be made in the form of a QJSA. Specifically, plan distributions need not be in the form of a QJSA if the participant waives the QJSA in favor of another form of distribution, the participant's spouse consents to the waiver, and each participant receives within a reasonable period of time before the annuity starting date a written explanation that describes the QJSA, the right to waive the QJSA and the rights of the participant's spouse. Section 417(a)(7), a provision added to the Code by the Small Business Job Protection Act of 1996 (SBJPA), creates an exception with regard to the timing of the QJSA explanation by permitting a plan to furnish the QJSA explanation after the annuity starting date. The proposed regulations specify the conditions under which such a "retroactive annuity starting date" may be used.<sup>1</sup> First, the plan must permit the use of a retroactive annuity starting date. Second, the participant must elect the retroactive date, and the participant's spouse must consent to it. Third, future payments (and a "make-up payment") to such participants must place them in approximately the same situation the participant would have been in had benefit payments commenced on the retroactive date. Fourth, the retroactive benefit payments must be based on the terms of the plan in effect as of the retroactive annuity starting date. Thus, the retroactive date may not be earlier than the date upon which the participant could have otherwise started receiving benefits under the terms of the plan in effect as of the retroactive annuity starting date. <sup>1</sup> The proposed regulations provide that a defined contribution plan would not be permitted to have a retroactive annuity starting date. <sup>2</sup> For purposes of satisfying the timing requirements for providing the QJSA explanation and obtaining spousal consent, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the otherwise applicable annuity starting date. Thus, the QJSA explanation must be provided generally no more than 90 days before the date of the first actual benefit payment, and the election to receive the distribution must be made after the written explanation is provided and on or before the first payment

is made. The regulations are proposed to be applicable for plan years beginning on or after January 1, 2002. Thomas T. Kim Assistant Counsel Attachment Attachment (in .pdf format)

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