

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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CC:PA:LPD:PR (REG-110980-10)
Room 5203
Internal Revenue Service
Department of the Treasury
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Submitted via www.regulations.gov

Re: Comments on Proposed Amendments to Treas. Reg. Section 417(e)
Partial Lump Sums from Defined Benefit Plans

Ladies and Gentlemen:

The National Coordinating Committee for Multiemployer Plans (the NCCMP) appreciates this opportunity to comment on the proposed regulation regarding actuarial conversion factors in connection with partial lump sums paid from defined benefit plans.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the more than ten million active and retired American workers and their families who rely on multiemployer plans for retirement, health and other benefits. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans and contributing employers in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service and trucking industries.

The multiemployer community applauds your initiatives to promote the payout of employees' retirement savings as secure lifetime income streams. This has been the mission of multiemployer defined benefit plans from the outset. Consistent with this mission, multiemployer pension plans hardly ever provide distributions before retirement age (except for death or disability), and very rarely pay lump sums other than small-benefit cashouts, which at this point are often limited to benefits worth less than \$1,000.

However, in response to participants' pressure for cash amounts that can help them launch their retirement dreams, some multiemployer defined benefit plans offer partial lump sums. Typically these enable a retiree to elect a small portion of his or her accrued annuity, say 10% or 15% of it, as a lump sum. Sometimes there is a dollar cap, perhaps \$2,000 - \$3,000, on the cash payout amount. It follows, of course, that the retiree's annuity benefits are reduced by the percentage taken as a single sum. For example, if the monthly normal retirement benefit was \$1,000 and the participant elected a 10% lump sum, he or she would receive \$900 per month thereafter. Based on the participant's and spouse's elections, it could be payable as a QJSA or in whatever optional annuity forms the plan provides.

Since the advent of the 417(e) valuation requirements, plans have determined the partial lump-sum amount using the prescribed 417(e) factors. Because the accrued annuity was considered the basic benefit, even though the level of monthly payments was reduced because part of it had been paid out, the optional payment forms would be calculated using the conversion factors specified for those options in the plan document. No other approach would have been considered: to those designing, funding, administering and participating in the plans, the partial lump sum is one payment form and the annuity, in its various available formats, is another.

Indeed, if the annuity alternatives were determined in any other manner when a retiring employee also chooses a partial lump sum, the result could be irrational and counterproductive. Using the 417(e) factors to convert the annuity to a QJSA could produce a monthly benefit that is lower or higher than what the normal plan factors would yield, depending on the alternative annuity form chosen, the plan factors for the particular option, the date of the distribution or the participant's age, among other things.

That is why the bifurcation approach in the proposed regulations generally makes sense. Otherwise, use of the 417(e) factors for the annuity conversion could reward some participants who elect a partial lump sum by unexpectedly increasing their annuity benefits as a consequence. On the other hand, if use of the 417(e) factors would yield a lower monthly benefit when the annuity is paid in QJSA form, for example, it could be argued that that violates the terms of the plan by imposing a reduction in monthly benefits that is greater than the specified percentage payable as the partial lump sum. To avoid that result, the plan would have to subsidize the annuity for people who elect a partial lump sum.¹

It would be ironic if a regulatory campaign designed to encourage pension plans to promote annuities were to have the effect of punishing plans that have long shared that policy goal and

¹ Winners and losers among participants would be sorted arbitrarily. For instance, multiemployer plans in the construction industry tend to base their annuity conversion factors on all-male mortality tables, given the make-up of their participant base, while those in retail or service industries use a male-female blend. With an all-male mortality plan assumption, the 417(e)-based conversion for a 65-year old retiring today is likely to be higher, but when the plan uses a 50-50 blend the 417(e)-based conversion is likely to produce a lower monthly benefit.

embodied it in their benefit offerings. Yet that might be the inadvertent result of the proposed regulation unless it is clarified to confirm that pension plans that already offer a partial lump sum option, but not a complete lump sum, meet the bifurcation standards. Also, given the long multiemployer tradition of administering partial lump sum options consistent with the general approach in the proposed regulation, any suggestion that they must now go back and increase annuity payments for people who elected partial lump sums under a grandfather approach should clearly be ruled out.

To ensure that plans that have historically operated within the bounds of the bifurcated approach are not unnecessarily harmed, we suggest that the proposed regulation make the following principles clear:

- There is no requirement for these plans to retroactively adjust annuities that are already in payment status.
- These plans may continue their current practice without being subject to any grandfathering requirements to comply with 411(d)(6).
- Maintaining their current practice does not create any administrative or reporting complexities.

We appreciate your consideration of these comments, in support of our mutual commitment to assure retirement security for multiemployer pension plan participants through the payment of predictable, secure lifetime annuities. NCCMP would be pleased to provide any additional information, or answer any questions you may have, in this connection.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy G. DeFrehn".

Randy G. DeFrehn

Executive Director