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## Proposed Regulations Section 1.417(a)(3)-1 Disclosure of Relative Value of Optional Forms of Benefit



### Comments to Internal Revenue Service

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Disclosure of  
Relative Values of  
Optional Forms of Benefit  
Proposed Rule

26 CFR Part 1

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The American Society of Pension Actuaries (ASPPA) submits the following comments on Proposed Regulations Section 1.417(a)(3)-1 ("Proposed Regulations") concerning the disclosure of the relative values of optional forms of benefit. Enabling participants to make informed decisions requires providing them with an "apples to apples" comparison between available payment forms along with other understandable and meaningful information. It is important that final regulations ensure the delivery of such data.

ASPPA is a national organization of 5,000 members who provide actuarial, consulting, administrative, legal and other services to qualified plans.

### Summary of Issues

The comments herein address the four issues listed below and are described in greater detail in the "Discussion of Issues" section. Each discussion of an issue begins with general comments, proceeds to more specific issues, and is followed with ASPPA's recommendation(s).

1. Develop a model notice.
2. Require a clear statement that an annuity form(s) is/are subsidized (if applicable), and whether that subsidy is included in a lump-sum option.
3. Include an explanation of the personal factors that participants should consider when electing a payment form.
4. Eliminate the rule requiring the use of uniform or generic actuarial assumptions for the comparison of relative value.

### Discussion of Issues

### Develop a Model Notice

ASPPA strongly supports the development of a model notice that explains the mechanics of the various distribution forms in general use and describes the effects of changing interest rates and mortality assumptions on optional forms of payment. A model notice provided as a required part of the distribution package would be more helpful than providing artificially determined relative values to participants who may not understand the basic mathematical and financial concepts involved. The model notice should include a checklist of the specific issues a participant should consider before selecting a distribution form (e.g., the checklist could prompt the participant to consider his or her retirement financial needs, health condition, dependent needs, and other retirement resources). The Service has effectively used model notices in other similar situations [e.g., the model Section 402(f) notice].

Recommendation: ASPPA urges the Treasury to develop a model notice to educate participants on important factors they should consider in making their retirement decisions.

### Require Disclosure of Any Subsidies

Defined benefit plans, and certain defined contribution plans, are required to pay a participant's benefit in the form of a life annuity for unmarried participants, and a joint and survivor annuity for a married participant. These plans also must provide a written explanation of the joint and survivor annuity to a married participant within a reasonable period of time before the annuity starting date, including the plan's benefit payment options and the relative value of each. The explanation must include a statement concerning the spouse's right to waive the survivor benefit and the effects of such a waiver. There is, however, no current requirement to explain any subsidized benefits and the effect of choosing a subsidized benefit over a non-subsidized benefit.

Recommendation: If an annuity option is subsidized, the disclosure should advise participants which options are subsidized and which are not, and explain the extent of the subsidy. If there is no subsidy, the disclosure should advise participants that all forms of benefit offered by the plan are actuarially equivalent [as required by Section 411(a)].

### Impact of Personal Situation on Participant's Decision

ASPPA estimates the cost of developing the disclosures mandated under the Proposed Regulations will be substantial and that the likely result will be to effect a change in the distribution option selected, but without any change in participants' attention to their specific retirement needs. While the proposals focus on providing information to participants about the numerical value of one form of distribution over another, the disclosure also should be utilized as an opportunity to emphasize that a participant's health, responsibility for support of a spouse or dependent, and the availability of other economic resources are crucial factors to consider before choosing a particular payment option.

Recommendation: The Proposed Regulations should be modified to require an explanation of the personal factors that participants should consider when electing a payment form and include a statement that actuarial equivalence does not mean all forms are appropriate for a particular participant. The disclosure requirement should be satisfied through the distribution of the model notice discussed above.

### Use of Actuarial Examples

The use of uniform or generic actuarial assumptions for the comparison of relative value is confusing and misleading and, thus, will likely cause a significant number of participants to make inappropriate choices. ASPPA understands that the intention of uniform assumptions is to simplify calculations and provide meaningful comparisons; however, the approach taken in the Proposed Regulations misses its mark in this regard. ASPPA can present numerous examples that show a wide variance in relative present values if different interest rates and actuarial tables are used.

If plans are required to provide comparisons showing the relative percentage value of an annuity form, versus a lump sum, many unsophisticated participants will be led to choose a payment form based solely on the one which is the most valuable on a relative basis. Since the relative value is arbitrary in nature (because the actual results will depend on the longevity of the participant and his or her dependents) and cannot take into account the personal needs of the participant, ASPPA views this approach as exchanging one possibly inappropriate choice for another. If too many participants are now choosing a lump sum because it appears to be more valuable, the approach taken in the Proposed Regulations will simply lead participants to choose a different payment form because it would appear more valuable.

Recommendation: The better approach is to provide a detailed explanation of the personal factors participants should take into account in choosing a form of payment.

The IRS subcommittee of the Government Affairs Committee prepared these comments with the assistance of the Actuarial Resource Group. Please contact us if you have any comments or questions regarding the matters discussed above.

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