ACTUARIAL

DISTRIBUTIONS AFTER NORMAL RETIREMENT AGE: ARE YOU PREPARED?

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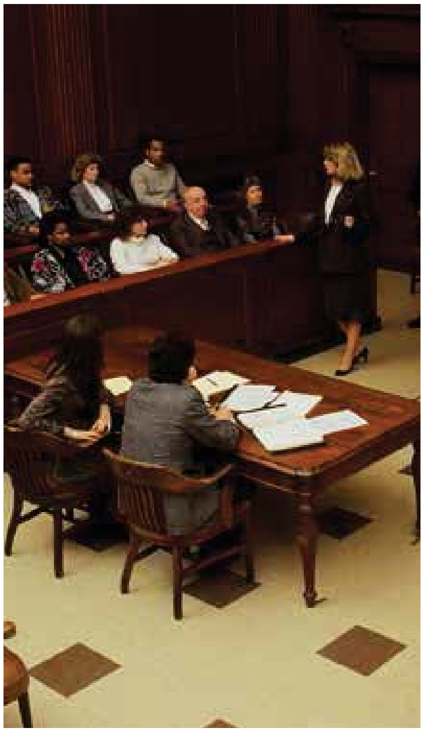

Part two of our analysis of situations where a plan participant in a defined benefit plan didn't commence benefits at normal retirement age and now requires a calculation of the benefits to be paid.

In Part 1, we reviewed the relevant provisions of law and plan qualification requirements. This article assumes familiarity with those provisions and requirements. As a reminder, we've categorized the situations by when the participant terminated employment. Part 1 covered situations in which the termination of employment took place before normal retirement age. In Part 2, we consider the following categories:

- Termination of employment on or after attainment of normal retirement age but *before* the April 1 following attainment of age 70 ½
- Termination of employment on or after attainment of normal retirement age *and* on or after the April 1 following attainment of age 70 ½

It's worthwhile to review the approach to the various factual situations. The solutions presented look to accomplish the following:

1. Comply with plan terms to the extent possible;
2. Avoid any prohibited forfeiture of benefits;
3. Satisfy the qualification requirements, including sections 401(a)(9), 415, and 436, and;
4. Be consistent with the correction rules set forth in Revenue Procedure 2008-50.

Also, for all situations the normal retirement age is age 65. The normal retirement benefit (at age 65) is $1,000 per month. Also, assume that the participant earns an additional monthly benefit of $100 for each year of service after age 65 (before any offset for actuarial increases).

Actuarial equivalence is based on a 6 percent interest rate and the mortality table is the unisex table specified by the IRS under section 417(e) for determining lump-sum benefits for 2012. Accumulation of missed payments is at interest only and actuarial equivalence uses mortality and interest. The accumulation of missed payments is at 3 percent.

At the end of this article you'll find a table that summarizes all the situations in Part 1 and Part 2, along with the results.

TERMINATION ON OR AFTER NORMAL RETIREMENT AGE BUT BEFORE AGE 70 1/2

In each of the situations under this category, the participant terminated covered employment after reaching normal retirement age, but before attaining age 70 ½, and has a vested benefit.[1] The situations will differ according to the plan provisions, including those regarding suspension of benefits and their application in the particular circumstances. Also, there will be differences as to what the plan provides with respect to the offset of additional accruals by actuarial increases in the retirement benefit, and when the participant desires to commence benefits. This category presents more complex issues than the category of situations in Part 1.

SITUATION 5[2]

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 67. No benefits are paid before retirement under the terms of the plan. The plan either doesn't provide for the suspension of benefits or did not provide the suspension notices. The plan doesn't provide for accruals after normal retirement age to be offset by actuarial increases in the benefit.

In this situation, the solution is relatively easy. The participant receives both the additional accruals and the actuarially increased benefits. Thus, the benefit at age 67 will consist of the sum of three amounts. The first amount is the $1,000 actuarially increased from age 65 to age 67, which is $1,203.08. The second amount is the $100 accrual from age 65 to age 66 as actuarially increased (from age 66) to age 67, which is $109.56. The third amount is the accrual from age 66 to age 67, which is $100. The total benefit is therefore $1,412.64.

SITUATION 6

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 67. No benefits are paid before retirement under the terms of the plan. The plan either doesn't provide for the suspension of benefits or did not provide the suspension notices. The plan does provide for accruals after normal retirement age to be offset by actuarial increases in the benefit, which is to be determined on a year-by-year basis.

For this situation, the solution is to offset the accrual each year by the actuarial increase in the plan benefits to determine the benefit payable at age 67. This determination is made on a year-by-year basis. At age 66, the actuarial increase of the $1,000 produces a benefit $1,095.62 while the $1,000 plus an additional accrual of $100 produces $1,100. Therefore, the benefit at age 66 is $1,100.

At age 67, the actuarial increase of the $1,100 from age 66 to age 67 produces a benefit of $1,207.89. The $1,100 plus an additional accrual of $100 produces a benefit of $1,200. Accordingly, the benefit payable commencing at age 67 is $1,207.89.

SITUATION 7

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 67. No benefits are paid before retirement under the terms of the plan. The plan does provide for the suspension of benefits and suspension notices are appropriately issued. The plan may or may not provide for accruals after normal retirement age to be offset by actuarial increases in the benefit.

Here the plan doesn't need to provide any actuarial increases. The suspension of benefits notices result in a forfeiture of the benefits otherwise payable. However, the additional accruals from age 65 to age 67 will enhance the benefit. Thus, at age 67 a benefit of $1,200 is paid.

SITUATION 8

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 67. The plan provides that benefits are to commence at normal retirement age. The plan either doesn't provide for the suspension of benefits or did not provide the suspension notices. The

[1] If the participant terminated upon the attainment of normal retirement age, the situations are just as described in Part 1. Similarly, it is assumed that continued employment results in continued accruals. That is because the challenges arise when the participant keeps on working after attaining normal retirement age and is still accruing benefits.

[2] To facilitate the table at the end, the numbering of the situations continues from those in Part 1.

plan doesn't provide for accruals after normal retirement age to be offset by benefit payments.

For situation 8, the solution is to pay the missed benefit payments with interest, taking into account the additional accruals. Thus, $25,973.47 is paid representing 12 months of $1,000 and 12 months of $1,100 accumulated at 3 percent. At age 67, the sum of $25,973.47 is made and monthly payments of $1,200 commence.

SITUATION 9

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 67. The plan provides that benefits are to commence at normal retirement age. The plan may or may not provide for the suspension of benefits or did not provide the suspension notices. The plan does provide for accruals after normal retirement age to be offset by benefit payments, which is to be determined on a year-by-year basis.

For situation 9, there are two solutions. The first solution is simply to pay the missed payments with interest, taking into account the additional accruals. Thus, the same payment of $25,973.47 will be paid as in situation 8 with monthly payments of $1,200 thereafter. This solution favors the participant and is consistent with the plan terms involving the payment of benefits. However, this solution isn't consistent with the plan terms concerning the offset of accruals by benefit payments.

The second solution is to offset the accrual each year by the benefit payments that should have been made. The resulting benefit payments are then accumulated with interest to age 67. The benefit payable also has to be determined. The benefit of $1,000 each month from normal retirement age 65 to age 66 accumulates to $12,194.12 at age 66. The benefit equivalent of the $12,194.12 is $93.62 commencing at age 66. The accrual of $100 is offset by $93.62 to produce a revised benefit of $1,006.38 starting at age 66.

At age 67, the $12,194.12 accumulates to $12,559.94. The payments of $1,006.38 accumulate to $12,271.87 and the benefit equivalent is $96.47 commencing at age 67. The accrual of $100 is offset by $96.47 to produce a revised benefit of $1,009.80 ($1,006.38 plus $3.43) starting at age 67. The lump sum payable is $24,831.82.

TERMINATION ON OR AFTER NORMAL RETIREMENT AGE AND AFTER AGE 70 1/2

In the final category considered, termination of employment takes place after normal retirement age and also after the April 1 following attainment of age 70 ½. In the situations presented below the required beginning date under the terms of the plan is the April 1 following attainment of age 70 ½. Thus, in all situations the plan is providing a uniform required beginning date for all. For purposes of these situations, the participant is assumed to be age 71 on the April 1 following attainment of age 70 ½.

SITUATION 10

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 72. No benefits are paid before retirement under the terms of the plan except that benefits are to commence at the required beginning date. The plan either doesn't provide for the suspension of benefits or did not provide the suspension notices. The plan doesn't provide for accruals after normal retirement age to be offset by actuarial increases in the benefit.

The first solution is to actuarially increase benefits (including additional accruals) to the required beginning date, pay the resulting missed payments (from the required beginning date until retirement) with interest, and then determine the ongoing benefit payable. The ongoing benefit payable is the benefit payable at the required beginning date, plus additional accruals (with any needed actuarial increase to the retirement date), minus the benefit equivalent of the payment of the missed payments with interest.

Under the first solution, the monthly benefit payable at age 71 is $2,577.76, which includes the actuarial increases for the additional accruals. The missed payments accumulated at interest are $31,433.56, and the benefit equivalent at age 72 is $285.73. The ongoing benefit is $2,870.92 ($2,577.76 actuarially increased from age 71 to age 72), plus another accrual of $100, minus the $285.73, or $2,685.18. Thus, at age 72, a payment of $31,433.56 will be made to make up for missed payments (from age 71 to age 72) and then the ongoing monthly benefit will be $2,685.18. This solution may be problematic if benefit restrictions under section 436 prevent the payment of $31,433.56.

The second solution is to actuarially increase benefits to the date of retirement and then commence benefits at the date of retirement. Under the second solution, the ongoing benefit at age 72 is $2,970.92. This solution works if benefit restrictions under section 436 apply, but doesn't reflect the plan terms that require benefits to commence on the April 1 following attainment of age 70 ½. A Voluntary Correction Program (VCP) filing should be considered.

SITUATION 11

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 72. No benefits are paid before retirement under the terms of the plan except that benefits are to commence at the required beginning date. The plan either doesn't provide for the suspension of benefits or did not provide the suspension notices. The plan does provide for accruals after normal retirement age to be offset by actuarial increases in the benefit, which is to be determined on a year-by-year basis.

Under the first solution, the benefit payable at the required beginning date is determined, the missed payments are accumulated with interest from required beginning date to the retirement age and are paid at that age, and the ongoing benefit payment is determined. The benefit payable at the required beginning date is $2,007.43, which is determined by a year-by-year comparison of the benefit as of the beginning of the year actuarially increased and the benefit as of the beginning of the year plus the additional accrual. Then the missed monthly payments of $2,007.43 are accumulated to age 72, which is $24,478.79. The benefit equivalent of the accumulated missed payments is $222.52. The ongoing payment is $2,113.29 ($2,007.43 actuarially increased plus $100 minus $222.52). Thus, at age 72, a payment of $24,478.79 is made and ongoing payments of $2,113.29 commence. This solution may be problematic if the restrictions of section 436 prevent the payment.

Under the second solution, the benefit payable at the required beginning date is determined, and then the benefit payable at retirement age is the benefit payable at the required beginning date, increased to retirement age, plus additional accruals (actuarially increased as necessary). Under this solution, the $2,007.43 is determined as in the first solution. There is no accumulation of missed payments. The monthly benefit payable at age 72 is $2,335.72 ($2,007.43 actuarially increased to age 72 plus $100 additional accrual). This solution works if benefit restrictions under section 436 apply, but doesn't reflect the plan terms that require benefits to commence at the April 1 following attainment of age 70 ½. A VCP filing should be considered.

SITUATION 12

The participant continues working past normal retirement age, and wants to retire immediately and commence benefits at age 72. No benefits are paid before retirement under the terms of the plan except that benefits are to commence at the required beginning date. The plan does provide for the suspension of benefits and gave the suspension notices. The plan may or may not provide for accruals after normal retirement age to be offset by actuarial increases in the benefit.

Under the first solution, the benefit payable at the required beginning date is determined, the missed payments are accumulated to retirement date and paid, and the ongoing payment is determined. The ongoing benefit payment is the benefit payable at the required beginning date, plus additional accruals (with any needed actuarial increase to the retirement date), minus the benefit equivalent of the payment of the missed payments with interest.

The benefit payable at the required beginning date is $1,600 (the normal retirement benefit of $1,000 plus six years of a $100 accrual). The accumulated missed payments to age 72 are $19,510.29. The benefit equivalent of the missed payments is $177.35 commencing at age 72. The ongoing benefit payment is $1,704.61 ($1,600 actuarially increased to age 72 plus $100 additional accrual minus $177.35). Once more, this solution is problematic if the restrictions of section 436 apply.

Under the second solution, the benefit payable at the required beginning date is determined, no payment of missed payments is made, and then the benefit payable at retirement age is the benefit payable at the required beginning date, increased to retirement age, plus additional accruals (actuarially increased as necessary). The benefit payable at the required beginning date is the $1,600 as in the first solution. The benefit payable at retirement age is $1,881.96 ($1,600 actuarially increased to age 72 plus $100 additional accrual). This solution works if benefit restrictions under section 436 apply, but doesn't reflect the plan terms that require benefits to commence on the April 1 following attainment of age 70 ½. A VCP filing should be considered.

SPECIAL SITUATIONS

The situations in the three categories in these articles assumed continuous service to a point in time and then termination of employment. In particular, the second and third categories contemplated service continuing after normal retirement age and then immediate commencement of benefits. The facts are not always so nice. Also, there may be situations where the surviving spouse is making a claim for benefits. The analysis of other situations can be straightforward but may combine elements of the situations already presented. To provide some example, the following presents two "special" situations with fact patterns that differ from those presented above.

SITUATION 13

The participant continued working past normal retirement age, then stopped working at age 67, and made no claim for benefits until age 69. The plan provides that benefits will commence at normal retirement age, or the age when application is made, if later. The plan provides for the suspension of benefits and suspension notices were provided after normal retirement age. The plan doesn't provide for additional accruals to be offset by benefit payments or actuarial increases.

The solution to this situation is to first determine the benefit payable at age 67, which is the normal retirement benefit plus additional accruals from age 65 to age 67, and then the actuarially increased benefit at age 69. Thus, the $1,000 is increased to $1,200 from age 65 to

age 67 because of two years of accrual at $100. The $1,200 is actuarially increased from age 67 to age 69, and a benefit of $1,457.67 is paid starting at age 69.

Note the dependence on the suspension of benefits and the period of time when there was no employment. This situation (as well as other situations) emphasizes the need to get the exact facts of a situation. If you are asked to make the calculations, I can't stress enough the importance of looking at the pertinent plan terms yourself, asking the relevant questions, and insisting that the facts be determined. For example, it makes a difference if suspension notices were actually provided to the participant. Let us consider one last situation.

SITUATION 14

The participant separated from service at age 64 and did not request that benefits commence at age 65. The participant died at age 67 and the surviving spouse is requesting both payments due to the participant when he was alive and payments due to her as the surviving spouse. The participant would have been age 69 at the date of the request from the surviving spouse. The plan requires that benefits commence at normal retirement age. The plan also provides a subsidized joint and 50 percent survivor benefit, so there is no reduction with respect to the surviving spouse. The current surviving spouse was the spouse continuously from the time the participant attained normal retirement age.

In this situation, the plan terms in operation would have provided two years of benefit payments to the participant and two years of benefit payments to the surviving spouse. The solution is to find the missed payments with respect to each, pay them with interest, and pay the surviving spouse ongoing benefits under the survivor annuity.

The accumulated missed payments to the participant at age 67 (date of death) are $24,754.06. This amount then accumulates to age 69 and is $26,261.58. The payments to the spouse should have been $500 commencing when the participant was age 67. Thus, the two years of missed payments accumulate to $12,377.03 at age 69. Therefore, the surviving spouse is paid a lump sum of $38,638.61 (the sum of $26,261.58 and $12,377.03) at the time the participant would have been age 69 and ongoing benefit payments of $500 a month continue thereafter while the spouse is alive.[3]

KEY POINTS TO REMEMBER

The plan terms and the facts are important for any analysis and solution. You may have to ask specific questions in order to find out what really happened. For example, someone may tell you that suspension-of-benefit notices were provided based on the fact that the plan has a provision. Often that isn't the case, and, in fact, suspension notices were not sent. The analysis should always keep the following in mind for a vested participant:

- There can't be a forfeiture of benefits unless benefits are suspended;
- Delay of payments until application is made for benefits doesn't permit a forfeiture of benefits;
- Try to adjust the solution to match plan terms; and
- Section 436 must be a consideration as should VCP.

Be extra careful when taking over a plan that has situations such as those above. The interpretation and calculations made in the past may conflict with the analysis you make. In that case, seek legal help to resolve the possible issues. This is especially the case if you can't replicate the calculations used for prior adjustments. PC

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[3] Note that this assumes §436 doesn't apply to the payment of this lump sum.

CATEGORY – TERMINATION OF EMPLOYMENT PRIOR TO NORMAL RETIREMENT AGE		
SITUATION	**KEY LAW**	**RESULT**
1	Nonforfeiture Rules EPCRS §436	Payment of $24,654.06 with ongoing monthly payment of $1,000
2	Nonforfeiture Rules	Monthly payment of $1,203.08 starting at age 67
3	Nonforfeiture Rules §401(a)(9) §436 EPCRS	*Solution 1* Payment of $93,436.98 with ongoing monthly payment of $1,000 *Solution 2* Payment of $81,242.86 with ongoing monthly payment of $1,113.72
4	Nonforfeiture Rules §401(a)(9) §436 EPCRS	*Solution 1* Payment of $1,999.43 starting at age 72 *Solution 2* Payment of $21,891.70 plus ongoing monthly payment of $1,795.27 *Solution 3* Payment of $21,891.70 with ongoing monthly payment of $1,800.44
CATEGORY – TERMINATION OF EMPLOYMENT AFTER NORMAL RETIREMENT AGE AND BEFORE AGE 70 ½		
5	Nonforfeiture Rules §411(b)(1)(H)	Monthly payment of $1,412.64 starting at age 67
6	Nonforfeiture Rules §411(b)(1)(H)	Monthly payment of $1,207.89 starting at age 67
7	Nonforfeiture Rules Suspension of Benefit Rules	Monthly payment of $1,200 starting at age 67
8	Nonforfeiture Rules §436 EPCRS	Payment of $25,973.47 with ongoing payment of $1,200
9	Nonforfeiture Rules §411(b)(1)(H) §436 EPCRS	*Solution 1* Payment of $25,973.47 with ongoing payment of $1,200 *Solution 2* Payment of $24,831.82 with ongoing payment of $1,009.80
CATEGORY – TERMINATION OF EMPLOYMENT AFTER NORMAL RETIREMENT AGE AND AFTER AGE 70 ½		
10	Nonforfeiture Rules §401(a)(9) §436 EPCRS	*Solution 1* Payment of $31,433.56 with ongoing payment of $2,685.18 *Solution 2* Payment of $2,970.92 starting at age 72
11	Nonforfeiture Rules §401(a)(9) §411(b)(1)(H) §436 EPCRS	*Solution 1* Payment of $24,478.79 with ongoing payment of $2,113.29 *Solution 2* Payment of $2,335.72 starting at age 72
12	Nonforfeiture Rules Suspension Rules §401(a)(9) EPCRS	*Solution 1* Payment of $19,510.29 with ongoing payment of $1,704.61 *Solution 2* Payment of $1,881.96 starting at age 72
CATEGORY – SPECIAL SITUATIONS		
13	Nonforfeiture Rules Suspension Rules	Payment of $1,457.67 starting at age 69
14	Nonforfeiture Rules §436 EPCRS QJSA Rules	Payment of $37,131.09 to spouse with ongoing payment of $500