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## Comments on Temporary and Final Section 401(a)(9) Regulations



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Washington, DC 20220

Paul T. Shultz  
Internal Revenue Service, Attn: T:EP:RA  
1750 Pennsylvania Avenue, NW, Room 483  
Washington, DC 20006

### Re: Comments on Temporary and Final Section 401(a)(9) Regulations

Dear Mr. Sweetnam and Mr. Shultz:

The American Society of Pension Actuaries ("ASPPA") respectfully submits the following additional comments on the final and temporary regulations under Internal Revenue Code ("Code") Section 401(a)(9), issued on April 17, 2002 ("Regulations") as a follow up to our meetings with IRS and Treasury officials in January and June 2003.

ASPPA is a national organization of over 5,000 members who provide actuarial, administration, consulting, legal and other professional services for qualified and other retirement plans.

ASPPA members met with IRS and Treasury officials in October 2002 to discuss issues concerning the provisions in the Regulations eliminating the use of the "account balance method" for calculating Required Minimum Distributions under defined benefit plans. ASPPA's principal concern, reflected in written comments submitted to the Service on October 21, 2002, is that the Regulations appear to require mandatory annuity distributions at the Required Beginning Date, locking participants into an annuity form of distribution and precluding a later election of another optional payment form (such as a lump sum) when a participant actually retires. It is our position that the Required Minimum Distribution should be equal to the amount that would be paid if the participant elected a distribution in the form of a life annuity. However, as ASPPA discussed with you, it is our strongly held view that Code Section 401(a)(9) is intended to provide for certain minimum distributions prior to actual retirement and that it is not intended to require participants to receive mandatory lifetime annuity distributions or prohibit the later election of an optional payment form upon actual retirement.

Following our meeting in October, the Service issued Notice 2003-2, which generally permits defined benefit plans to continue using the account balance method, pending further review and the issuance of further guidance. ASPPA subsequently met with IRS and Treasury officials in January and June of this year to further discuss these issues. In these meetings, ASPPA discussed how the Code Section 415 limits should be applied to a participant who begins receiving Required Minimum Distributions and later elects a lump sum payment at his or her actual retirement date. Most recently, this issue was discussed in a meeting on June 9, 2003. This letter follows up on the discussion from that meeting.

The suggestion made by ASPPA at our June 9 meeting was to calculate the Code Section 415 limit for benefits payable at a participant's actual retirement date, after Required Minimum Distributions have begun, in the same manner as prescribed in IRS Notice 99-44. Q&A 4 of that Notice prescribes the method for calculating the maximum permissible benefit increase for a participant who began receiving benefits under a defined benefit plan prior to the repeal of Code Section 415(e). Consistent with the method set forth in Notice 99-44, Q&A 4, and Examples 1 and 2, ASPPA proposes the following methodology for calculating the maximum permissible benefit payable to a participant at his or her actual retirement date, after Required Minimum Distributions have begun:

? For forms of benefit not subject to Code Section 417(e)(3), the maximum annual benefit for limitation years

beginning with the year in which the participant actually retires and elects to begin receiving benefits would be equal to the Section 415(b) limitation for the employee (increased by cost of living adjustments, if provided under the plan) based on the employee's age at the actual retirement date, plus the actuarial equivalent of the additional amounts that could have been paid for the years from the participant's Required Beginning Date to the date of actual retirement [i.e., the actuarial equivalent of the difference between the Required Minimum Distribution and the maximum benefit that could have been paid for such years under Code Section 415(b)].

? For forms of benefit subject to Code Section 417(e)(3), the benefit payable for limitation years beginning with the year in which the participant actually retires and elects to begin receiving benefits would be the actuarial equivalent of the straight life annuity payable at the participant's actual retirement date, plus the actuarial equivalent of the additional amounts that could have been paid during the years from the participant's Required Beginning Date to the date of actual retirement, if benefits had been paid in the form of a straight life annuity.

At the June 2003 meeting, IRS and Treasury representatives correctly noted that Examples 1 and 2 deal with annuity payments and installment payments and do not address the situation where a lump sum is payable. However, ASPPA believes that the text of Q&A 4 adequately describes the methodology that can be used in the case of a lump sum payment.

ASPPA appreciates the time and effort of IRS and Treasury representatives gave in meeting with us to discuss these issues. We invite the Service to contact us if there are questions concerning this proposal or if further discussions are desired.

Prepared by:

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