authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 767–53A0113, dated February 26, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on January 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1207 Filed 1–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9176]

RIN 1545–BC35

Elimination of Forms of Distribution in Defined Contribution Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that would modify the circumstances under which certain forms of distribution previously available are permitted to be eliminated from qualified defined contribution plans. These final regulations affect qualified retirement plan sponsors, administrators, and participants.

DATES: These regulations are effective January 25, 2005.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, 202–622–6060 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code of 1986 (Code) as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 117).

Section 411(d)(6)(A) of the Code generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Section 411(d)(6)(B) prior to amendment by EGTRRA provided that an amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either eliminating or reducing an early retirement benefit or a retirement-type subsidy, or, except as provided by regulations, eliminating an optional form of benefit.

The IRS published TD 8900 in the **Federal Register** on September 6, 2000 (65 FR 53901). TD 8900, which amended § 1.411(d)–4 of the Income Tax Regulations, added paragraph (e) of Q&A–2 to provide for additional circumstances under which a defined contribution plan can be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under certain optional forms of benefit.

Section 1.411(d)–4, Q&A–2(e)(1), provides that a defined contribution plan may be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution form that is otherwise identical to the eliminated or restricted optional form of benefit. The amendment cannot apply to a participant for any distribution with an annuity starting date before the earlier of the 90th day after the participant receives a summary that reflects the plan amendment and that satisfies Department of Labor's requirements for a summary of material modifications under 29 CFR 2520.104b–3, or the first day of the second plan year following the plan year in which the amendment is adopted. Section 1.411(d)–4, Q&A–2(e)(2), provides that a single-sum distribution form is otherwise identical to the optional form of benefit that is being eliminated or restricted only if it is identical in all respects (or would be identical except that it provides greater rights to the participant), except for the timing of payments after commencement. A single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum form:

- Is not available for distribution on any date on which the installment form could have commenced;
- Is not available in the same medium as the installment form; or
- Imposes any additional condition of eligibility.

Further, an otherwise identical distribution form need not retain any rights or features of the eliminated or restricted optional form of benefit to the extent those rights or features would not be protected from elimination under the anti-cutback rules. The single-sum distribution form would not, however, be disqualified from being an otherwise identical distribution form if the single-sum form provides greater rights to participants than did the eliminated or restricted optional form of benefit.

Section 645(a)(1) of EGTRRA added section 411(d)(6)(E), which provides that, except to the extent provided in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit where a plan amendment eliminates a form of distribution previously available under the plan if a single-sum distribution is available to the participant at the same time as the form of distribution eliminated by the amendment and the single-sum distribution is based on the same or greater portion of the participant's account as the form of distribution eliminated by the amendment. Thus, section 411(d)(6)(E) includes conditions that are similar to those in existing § 1.411(d)–4, Q&A–2(e), but without the advance notice condition.

On July 8, 2003, a notice of proposed rulemaking (REG–112039–03) was published in the **Federal Register** (68 FR 40581) to reflect the addition of section 411(d)(6)(E) by EGTRRA. The proposed regulations amended § 1.411(d)–4, Q&A–2(e) to eliminate the 90-day advance notice condition on plan amendments otherwise permitted under § 1.411(d)–4, Q&A–2(e). Following publication of the proposed regulations, comments were received, but no public hearing was requested. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

These final regulations retain the general structure and much of the substance of the proposed regulations, including an example illustrating the provisions. Some changes have been made in connection with a specific recommendation for modification and clarification. The comments received in response to the proposed regulations are generally summarized below.

Two commentators were concerned that, following the elimination of the 90-day notice requirement, plan participants who counted on being able to retire with an annuity could discover that option is suddenly gone. The commentators argued that the participant may have made plans based on the expectation of receiving an annuity, and that, although participants can purchase annuities with their lump sums, they may find that annuities purchased outside the plan cost more or pay lower amounts than what they were expecting from the plan. The commentators recommended that, to the extent plan sponsors adopt amendments that terminate an annuity option, those plan sponsors should allow participants within 90 days of retiring at the time of the amendment to be permitted to elect that annuity.

The legislative history to section 645(a)(1) of EGTRRA shows that Congress was aware of the notice requirement in existing § 1.411(d)–4, Q&A–2(e)(2), and adopted all of the same provisions in section 411(d)(6)(E) as are in existing § 1.411(d)–4, Q&A–2(e)(2), except for the notice requirement. See Conference Report No. 107–84, 107th Cong., 1st Session 253–254. Accordingly, these final regulations adopt the amendments in the proposed regulation. The regulations retain the rules under which a defined contribution plan may be amended to eliminate or restrict a participant's right to receive payment of accrued benefits under a particular optional form of benefit without violating the section 411(d)(6) anti-cutback rules if, once the plan amendment takes effect for a participant, the alternative forms of payment that remain available to the participant include payment in a single-sum distribution. The regulations clarify that such an amendment can apply only to distributions with annuity starting dates after the amendment is adopted and, therefore, cannot apply to distributions that have already commenced. However, these final regulations remove the 90-day notice condition previously applicable to these plan amendments.[1]

One commentator commented on the example in § 1.411(d)–4, Q&A–2(e), of the proposed regulations. The commentator stated it is not clear from the example why the amendment does not apply to P (the participant in the Plan) if P elects to have annuity payments begin before July 1, 2004. The commentator stated that the confusion may result because the example provided that the amendment is adopted on May 2, 2004, but does not provide when the amendment is effective. The example has been revised to reflect the comment.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of the Employee Retirement Income Security Act of 1974 (ERISA). Section 204(g)(2) of ERISA, as amended by EGTRRA, provides a parallel rule to section 411(d)(6)(E) of the Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to provide exception to this parallel ERISA requirement. Therefore, regulations issued under section 411(d)(6)(E) of the Code apply for purposes of the parallel requirements of section 204(g)(2) of ERISA, as well as for section 411(d)(6)(E) of the Code.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

■ **Paragraph 1.** The authority citation for part 1 is amended to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.411(d)–4, Q&A–2(e) is revised to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans*—(1) *General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit for distributions with annuity starting dates after the date the amendment is adopted if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical single-sum distribution.* For purposes of this paragraph (e), a single-sum distribution form is otherwise identical to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A–2 only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, or imposes any

[1] The Department of Labor has advised Treasury and the IRS that plans covered by Title I of ERISA are subject to the requirement under Title I that plan amendments be described in a timely summary of material modifications (SMM) or a revised summary plan description (SPD) to be distributed to plan participants and beneficiaries in accordance with applicable Department of Labor disclosure rules (see 29 CFR 2520.104b–3).

condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Example.* The following example illustrates the application of this paragraph (e):

Example. (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Distributions on the death of a participant are made in accordance with plan provisions that comply with section 401(a)(11)(B)(iii)(I). On September 2, 2004, Plan M is amended so that, effective for payments that begin on or after November 1, 2004, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)).

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of November 1, 2004, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

(4) *Effective date.* This paragraph (e) is applicable on January 25, 2005.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: January 10, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–1327 Filed 1–24–05; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 and 102

Final Rules Governing Consent-Election Agreements

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: On July 22, 2004 the National Labor Relations Board published in the **Federal Register** proposed changes to its rules to provide a mechanism to have preelection disputes decided with finality by the Regional Director as part of its ongoing efforts to address the needs of employers, individuals and labor organizations and to further the fundamental purposes of the Act. One comment was received in response to this publication. The American Federation of Labor and Congress of Industrial Organizations, AFL–CIO, supported the proposed changes, but expressed the view that the changes did not address what it considered to be major problems in the Board's representation process. Upon consideration of that comment, the National Labor Relations Board (NLRB) is adopting the proposed changes and publishing the rules as final.

EFFECTIVE DATES: March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: Section 102.62 of the Board's Rules and Regulations currently provides two kinds of ''consent'' election procedures. Under both procedures, the parties must stipulate with respect to jurisdictional facts, labor organization status, appropriate unit description, and classifications of employees included and excluded. The parties must also agree to the time, place and other election details. Under Sec. 102.62(a), the parties agree that postelection disputes will be resolved with finality by the Regional Director. Under Sec. 102.62(b), postelection disputes are resolved pursuant to Sec. 102.69, with the parties retaining the right to file exceptions or requests for review with the Board. The Board is revising its Rules and Regulations to create a new, voluntary procedure whereby the parties can agree to the conduct of an election with disputed preelection and postelection matters to be resolved with finality by the Regional Director. The new rule also amends Sec. 102.62(a) to provide that the decision of the Regional Director in a postelection proceeding has the same force and effect as that of the Board ''in that case.'' The addition of this language makes it clear that the Regional Director's decision will not be regarded as Board precedent in future cases. Identical language is present in the revised Sec. 102.62(c). In addition to revisions to Sec. 102.62 of the Board's Rules and Regulations, the Board also has revised its Statements of Procedures, Sec. 101.19 and 101.28, to reflect the revisions to Sec. 102.62 in the description of Board processing of union deauthorization elections (Sec. 101.28) and all other elections (Sec. 101.19).

Under the new procedures, after the filing of a petition supported by the requisite showing of interest, an employer and individual or labor organization can voluntarily enter into an agreement under which the Regional Director will resolve with finality disputed pre- and postelection issues and issue a certification of representative or results. If the parties voluntarily agree to utilize this new procedure they will be assured of a more expeditious and final resolution of their question concerning representation by a Regional Director, who will act in a neutral, expert, and conclusive fashion. Although the Agency decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure, or practice and thus no notice of proposed rulemaking was required under section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR parts 101 and 102 as follows:

PART 101—STATEMENTS OF PROCEDURES

■ 1. The authority citation for 29 CFR part 101 continues to read as follows:

Authority: Section 6 National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 55(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Public Law 100–236, 28 U.S.C. 2112(a)(1).

■ 2. Section 101.19 is amended by revising the introductory text and adding paragraph (c) to read as follows: