

LAW AND ANALYSIS

Section 411(a)(11) sets forth consent requirements that must be satisfied with respect to certain distributions in order for a plan to be qualified under § 401(a). Under § 411(a)(11), if the present value of a participant's nonforfeitable benefit exceeds \$3,500, the plan must provide that the benefit is not immediately distributable without the participant's consent.

Section 1.411(a)-11(c)(2)(i) of the Income Tax Regulations provides that consent to a distribution is not valid if, under the plan, a significant detriment is imposed on any participant who does not consent to the distribution. That regulation further provides that whether or not a significant detriment is imposed is determined based on the particular facts and circumstances.

Based on the facts and circumstances applicable to Plan A, the loss of the right to choose among a broad range of investment alternatives with materially different risk and return characteristics is a significant detriment, within the meaning of § 1.411(a)-11(c)(2)(i), that is imposed by Plan A on a participant who does not consent to a distribution. Therefore, Plan A permits an immediate distribution without a valid consent.

HOLDING

Plan A fails to satisfy § 411(a)(11) because a participant's benefit is immediately distributable under the plan without the participant's valid consent.

EFFECT OF PRIOR DETERMINATION LETTER

A plan that has received a determination letter on a provision inconsistent

with this revenue ruling, and that satisfies the conditions for reliance set forth in section 22.04(1) through (4) of Rev. Proc. 96-6, 1996-1 I.R.B. 151, may continue to rely on that determination letter for the period described in Rev. Proc. 96-6. Such a plan, however, is not entitled to the extended reliance provisions of Rev. Proc. 89-9, 1989-1 C.B. 780, and Rev. Proc. 89-13, 1989-1 C.B. 801, as modified by Rev. Proc. 93-9, 1993-1 C.B. 474, and Rev. Proc. 93-39, 1993-2 C.B. 513, with respect to the guidance in this revenue ruling. A plan that is amended to comply with this revenue ruling will not lose its otherwise applicable extended reliance period.

DRAFTING INFORMATION

The principal author of this revenue ruling is James Flannery of the Employee Plans Division. For further information regarding this revenue ruling, please contact the Employee Plans Division's taxpayer assistance telephone service between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday, by calling (202) 622-6074/6075, or Mr. Flannery on (202) 622-6214. (These telephone numbers are not toll-free numbers.)

Rev. Rul. 96-47

ISSUE

Does a defined contribution plan that allows participants who have not terminated employment to direct the investment of their accounts and that offers a broad range of investment choices satisfy the consent requirements of § 411(a)(11) of the Internal Revenue Code if the accounts of former employees who do not consent to an immediate distribution of their account balances are required to be invested in a money market fund?

FACTS

Plan A, a profit-sharing plan, allows each participant who has not terminated employment to choose the manner in which his or her account is invested among the plan's investment alternatives. The choices include a broad range of investment alternatives, including a money market fund and several other funds with materially different risk and return characteristics.

Plan A provides that a participant who terminates employment prior to normal retirement date will receive his or her vested account balance at normal retirement date unless the participant elects, upon termination of employment or any time thereafter, to receive an immediate distribution of the vested account balance. Plan A also provides that upon termination of employment the participant may no longer choose among investment alternatives and the participant's account will automatically be invested in the money market fund until distributed.