

# **PENSION RIGHTS CENTER**

## **PENSION TRAINING**

### **FROM REGS TO RICHES** *And Other Nuggets in Eight-Point Type*

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**FROM REGS TO RICHES**  
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**VESTING IN 401(k) PLANS**  
**Excerpt from 401(k) Preamble to Regs**

**D. Requirement that the elective contributions be immediately nonforfeitable.**

The final regulations reflect the statutory requirement that elective contributions to a qualified CODA be immediately nonforfeitable. However, the final regulations clarify that the reference to these contributions being "disregarded for purposes of applying section 411(a) to other contributions" is limited to being disregarded for purposes of section 411(a)(2). Thus, for example, elective contributions under a qualified CODA are taken into account for purposes of determining whether a participant is a nonvested participant for purposes of section 411(a)(6)(D)(iii).

**E. Restrictions on withdrawals**

As discussed above, a qualified CODA must provide that elective contributions may only be distributed after certain events, including hardship and severance from employment. EGTRRA amended section 401(k)(2)(B)(i) by replacing "separation from service" with "severance from employment." This change eliminated the "same desk rule" as a standard for distributions under section 401(k) plans.

In addition, EGTRRA amended section 401(k)(10) by deleting distribution by a corporation of substantially all of the assets of a trade or business and disposition of a corporation's interest in a subsidiary, leaving termination of the plan as the only distributable event described in section 401(k)(10). Further, EGTRRA directs the Secretary of the Treasury to revise the regulations relating to distributions under section 401(k)(2)(B)(i)(IV) to provide that the period during which an employee is prohibited from making elective and employee contributions following a hardship distribution is 6 months (instead of 12 months as required under § 1.401(k)-1(d)(2)(iv)(B)(4) of the pre-SBJPA regulations).<sup>4</sup> Finally, section 662 of EGTRRA amended section 404(k)(2) to allow a deduction for dividends paid on employer securities held by an ESOP if those dividends are reinvested in employer securities pursuant to an election by the participant or beneficiary to reinvest the dividends or have them paid in cash. Section 662 of EGTRRA is effective for taxable years of a corporation beginning on or after January 1, 2002.

Notice 2001-56, Notice 2002-2 (2002-1 C.B. 285), and Notice 2002-4 provided guidance on these EGTRRA changes to the distribution rules for elective contributions. That guidance was generally incorporated in the proposed regulations. These final regulations adopt the rules in the proposed regulations but clarify that the requirement that a participant must have obtained all distributions currently available under all qualified plans of the employer in order to qualify for a hardship distribution applies equally to a distribution of an ESOP dividend. This implements the rule set forth in Notice 2002-2.

Comments were requested on whether a change in status from a common law employee to a leased employee described in section 414(n) should be treated as a severance from employment that would permit a distribution to be made. After reviewing the comments, these final regulations do not add the change to leased employee to the list of distributable events and retain the use of the section 410(b) definition of employee for purposes of section 401(k). Because an individual who is a leased employee (as defined in section 414(n)) is treated as an employee of the recipient of the individual's services for purposes of section 410(b) (unless the safe harbor plan requirements described in section 414(n)(5) are met), the individual does not incur a severance from employment as a result of becoming a leased employee.

In addition to the statutory changes, the rules relating to hardship distributions were reorganized in the proposed regulations in order to clarify certain ambiguities, including the relationship between the generally applicable rules, employee representations, and the safe harbors provided under the pre-SBJPA regulations. The final regulations adopt the rules in the proposed regulations with some minor modifications. In response to comments, the final regulations add funeral expenses and certain expenses relating to the repair of damage to the employee's principal residence to the list of events that are deemed to be immediate and heavy financial needs.

The pre-SBJPA regulations and the proposed regulations treated medical expenses for an employee's spouse or dependent described in section 152 as a deemed heavy and financial need. The Working Families Tax Relief Act of 2004 (118 Stat. 1166), Public Law 108-311, modified section 152's definition of dependent, effective for tax years beginning in 2005. These final regulations revise the proposed regulations to disregard certain provisions in section 152's definition of dependent in the case of post-secondary educational expenses. These

final regulations also revise the proposed regulations to treat expenses for (or necessary to obtain) medical care that would be deductible under section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) as a deemed heavy and financial need. These changes have the effect of allowing medical expenses and post-secondary educational expenses for an employee, spouse, or dependent (without regard to the change in the definition of dependent under the Working Families Tax Relief Act of 2004) to be treated as a deemed heavy and financial need. The modifications in these final regulations also effectively expand the definition of dependent for medical expenses to include a non-custodial child who is subject to the special rule of section 152(e), but would exclude nonprescription drugs or medicine (other than insulin). Prior to the effective date of these regulations with respect to a plan, a sponsor can continue to interpret the plan terms and the pre-SBJPA regulations without regard to the statutory change in the definition of dependent.

Some commentators asked for specific guidance on the documentation and verification requirements for a hardship distribution. The final regulations do not address this issue. However, taxpayers are reminded that section 6001 requires that they keep the records necessary to demonstrate compliance with the qualification requirements of section 401 and the rules of section 401(k) and 401(m).

**F. Other rules for qualified CODAs**

The final regulations retain the additional requirements set forth in the pre-SBJPA regulations that a CODA must satisfy in order to be qualified, with some minor modifications. First, in order to be a qualified CODA, the arrangement must provide an employee with an effective opportunity to elect to receive the amount in cash no less than once during the plan year. Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including adequacy of notice of the availability of the election, the period of time before the cash is currently available during which an election may be made, and any other conditions on elections.

The final regulations also require a plan to provide for satisfaction of one of the specific nondiscrimination alternatives described in section 401(k). As with the pre-SBJPA regulations, the plan may accomplish this by incorporating by reference the ADP test of section 401(k)(3) and the regulations under proposed § 1.401(k)-2(a) and (b), if that is the nondiscrimination alternative being used. If, with respect to the nondiscrimination alternative being used, there are optional choices available, the plan must provide which of the optional choices will apply. For example, a plan that uses the ADP test of section 401(k)(3) must specify whether it is using the current year testing method or prior year testing method. Additionally, a plan that uses the prior year testing method must specify whether the ADP for eligible NHCEs for the first plan year is 3% or the actual ADP for the eligible NHCEs for the first plan year. The final regulations also provide that the Commissioner may, in guidance of general applicability, specify the default options that will apply under the plan if the nondiscrimination test is incorporated by reference in accordance with the final regulations.

Additionally, a plan that uses the safe harbor method must specify whether the safe harbor contribution will be the nonelective safe harbor contribution or the matching safe harbor contribution and is not permitted to provide that ADP testing will be used if the requirements for the safe harbor are not satisfied. The safe harbors are intended to provide employees with a minimum threshold in benefits in exchange for easier compliance for the plan sponsor. It would be inconsistent with this approach to providing benefits to allow an employer to deliver smaller benefits to NHCEs and revert to testing. Accordingly, if, at the beginning of the plan year, a plan contains an allocation formula that includes safe harbor matching or nonelective contributions, these regulations clarify that, except to the extent permitted under § 1.401(k)-3 and § 1.401(m)-3, the plan may not be amended to revert to testing for the plan year.

The final regulations retain the existing rules relating to the section 401(k)(4)(A) prohibition on having benefits (other than a match) contingent on making or not making an elective contribution. These final regulations also reflect the amendment to section 416(c)(2)(A) (under which matching contributions can be taken into account for purposes of satisfying the top-heavy minimum contribution requirement without violating the prohibition on making benefits contingent on making or not making elective contributions), the amendment of section 401(k)(4)(B) by SBJPA (allowing tax exempt organizations to maintain section 401(k) plans), and the enactment of section 402(g)(8) (provid-

<sup>4</sup> Section 402(c), as amended by the IRS Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685), and EGTRRA, a hardship distribution is not an eligible event for a distribution. While the change affects distributions from a section 401(k) plan,

there is no specific reference to the change in these regulations because these regulations are under sections 401(k) and (m).

## **RELATIVE VALUE DISCLOSURE REGULATIONS**

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) SPECIAL RULE FOR DISABILITY BENEFITS. For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) EARLIEST RETIREMENT AGE. The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) PLAN MAY TAKE INTO ACCOUNT INCREASED COSTS. A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) DISTRIBUTIONS BY REASON OF SECURITY INTERESTS. If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a) (4), nothing in this section or section 411(a) (11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) REQUIREMENTS FOR CERTAIN SPOUSAL CONSENTS. No consent of a spouse shall be effective for purposes of subsection (e) (1) or (e) (2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a) (1) (A) are met.

(7) CONSULTATION WITH THE SECRETARY OF LABOR. In prescribing regulations under this section and section 401(a) (11), the Secretary shall consult with the Secretary of Labor.

#### Amendments

P.L. 99-514, § 1898(b)(4)(A)(iii):

Act Sec. 1898(b)(4)(A)(iii) amended Code Sec. 417(f) by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) new paragraph (5) to read as follows:

For the effective date of the above amendment, see Act Sec. 1898(b)(4)(C) in the amendment notes to Code Sec. 417(a), above.

P.L. 99-514, § 1898(b)(8)(A):

Act Sec. 1898(b)(8)(A) amended Code Sec. 417(f) (1) by striking out "the accrued benefit derived from employer contributions" and inserting in lieu thereof "such participant's accrued benefit".

The above amendment applies to distributions after October 22, 1986 [effective date amended by P.L. 101-239, § 7862(d)(2).—CCH.]

P.L. 99-514, § 1898(b)(10)(A), (12)(A):

Act Sec. 1898(b)(10)(A) amended Code Sec. 417(f) (as amended by Act Sec. 1898(b)(4)) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) new paragraph (6) to read as above.

Act Sec. 1898(b)(12)(A) amended Code Sec. 417(f) (2) to read as above. Prior to amendment, Code Sec. 417(f) (2) read as follows:

(2) ANNUITY STARTING DATE.—The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).

The above amendments are effective as if included in the provision of P.L. 98-397 to which such amendments relate.

P.L. 98-397, § 203(b):

Added Code Sec. 417 above.

The above amendment applies only in the case of participants who have at least 1 hour of service under the plan on or after the date of enactment or have at least 1 hour of paid leave on or after such date. Special rules appear in the notes for H.R. 4280, following Code Sec. 401(a).

#### [Sec. 417(g)]

(g) DEFINITION OF QUALIFIED OPTIONAL SURVIVOR ANNUITY.—

(1) IN GENERAL. For purposes of this section, the term "qualified optional survivor annuity" means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) APPLICABLE PERCENTAGE.—

(A) IN GENERAL. For purposes of paragraph (1), if the survivor annuity percentage—

(i) is less than 75 percent, the applicable percentage is 75 percent, and

(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(B) SURVIVOR ANNUITY PERCENTAGE. For purposes of subparagraph (A), the term "survivor annuity percentage" means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

The above amendment is effective generally for plan years beginning after December 31, 2007.

#### Amendments

P.L. 109-280, § 1004(a)(2):

Act Sec. 1004(a)(2) amended Code Sec. 417 by adding at the end a new subsection (g).

### Regulations

The following regulations under Code Sec. 417(a) (3) were adopted on December 17, 2003 by T.D. 9099 (68 FR 70141), revised on March 24, 2006 by T.D. 9256 (71 FR 14798), corrected on May 8, 2006 (71 FR 26688), and amended October 20, 2006 by T.D. 9294 (71 FR 61877).

→ **Caution: Reg. Sec. 417(a)(3)-1 applies to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004.**

#### [§ 12,551]

§ 1417(a)(3)-1. Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

(a) Written explanation requirement. (1) General rule. A plan meets the survivor annuity requirements of section 401(a) (11) only if the plan meets the requirements of section 417(a) (3) and this section regarding the written explanation required to be provided a participant with respect to a QJSA or a QPSA. A written explanation required to be provided to a participant with respect to either a QJSA or a QPSA under section 417(a) (3) and this section is referred to in this section as a section 417(a) (3) explanation. See § 1.401(a)-20, Q&A-37, for exception to the written explanation requirement in the case of a fully

subsidized QPSA or QJSA, and § 1.401(a)-20, Q&A-38, for the definition of a fully subsidized QPSA or QJSA.

(2) Time for providing section 417(a)(3) explanation. (i) QJSA explanation. See § 1.417(e)-1(b) (3) (ii) for rules governing the timing of the QJSA explanation.

(ii) QPSA explanation. See § 1.401(a)-20, Q&A-35, for rules governing the timing of the QPSA explanation.

(3) Required method for providing section 417(a)(3) explanation. A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not

considered provision of the section 417(a)(3) explanation. But see § 1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to retirement plans. [Amended 10/20/2006 (71 FR 61877).]

(4) *Understandability.* A section 417(a)(3) explanation must be written in a manner calculated to be understood by the average participant.

(b) *Required content of section 417(a)(3) explanation.* (1) *Content of QPSA explanation.* The QPSA explanation must contain a general description of the QPSA, the circumstances under which it will be paid if elected, the availability of the election of the QPSA, and, except as provided in paragraph (d)(3) of this section, a description of the financial effect of the election of the QPSA on the participant's benefits (i.e., an estimate of the reduction to the participant's estimated normal retirement benefit that would result from an election of the QPSA).

(2) *Content of QJSA explanation.* The QJSA explanation must satisfy either paragraph (c) or paragraph (d) of this section. Under paragraph (c) of this section, the QJSA explanation must contain certain specific information relating to the benefits available under the plan to the particular participant. Alternatively, under paragraph (d) of this section, the QJSA explanation can contain generally applicable information in lieu of specific participant information, provided that the participant has the right to request additional information regarding the participant's benefits under the plan.

➔ **Caution: Reg. Secs. 1.417(a)(3)-1(c)(1) and 1.417(a)(3)-1(c)(1)(iii) prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appear below.**

(c) *Participant-specific information required to be provided.* (1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant (i.e., optional forms of benefit with an annuity starting date for which the QJSA explanation applies)—

- (i) A description of the optional form of benefit;
- (ii) A description of the eligibility conditions for the optional form of benefit;
- (iii) A description of the financial effect of electing the optional form of benefit (i.e., the amount payable under the form of benefit to the participant during the participant's lifetime and the amount payable after the death of the participant);
- (iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner described in paragraph (c)(2) of this section; and
- (v) A description of any other material features of the optional form of benefit.

➔ **Caution: Reg. Secs. 1.417(a)(3)-1(c)(1) and 1.417(a)(3)-1(c)(1)(iii), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appear below.**

(1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant (i.e., optional forms of benefit for which the QJSA explanation applies that have an annuity starting date after the providing of the QJSA explanation and optional forms of benefit with retroactive annuity starting dates that are available with payments commencing at that same time)—

- (i) A description of the optional form of benefit;
- (ii) A description of the eligibility conditions for the optional form of benefit;
- (iii) A description of the financial effect of electing the optional form of benefit (i.e., the amounts and timing of payments to the participant under the form of benefit during the participant's lifetime, and the amounts and timing of payments after the death of the participant);
- (iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of

the QJSA, in the manner described in paragraph (c)(2) of this section; and

(v) A description of any other material features of the optional form of benefit.

(2) *Requirement for numerical comparison of relative values.* (i) *In general.* The description of the relative value of an optional form of benefit compared to the value of the QJSA under paragraph (c)(1)(iv) of this section must be expressed to the participant in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. Thus, in performing the calculations necessary to make this comparison, the benefits under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that the values of both optional forms of benefit are expressed in the same form. For example, such a comparison may be expressed to the participant using any of the following techniques—

(A) Expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA;

(B) Stating the amount of the annuity that is the actuarial equivalent of the optional form of benefit and that is payable at the same time and under the same conditions as the QJSA; or

(C) Stating the actuarial present value of both the optional form of benefit and the QJSA.

➔ **Caution: Reg. Sec. 1.417(a)(3)-1(c)(2)(ii), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) *Use of one form for both married and unmarried individuals.* (A) *In general.* Under the rules of this paragraph (c)(2)(ii), in lieu of providing different QJSA explanations for married and unmarried individuals, the plan may provide a QJSA explanation to an individual that does not vary based on the participant's marital status. Except as specifically provided in paragraph (c)(3)(iii) of this section, any reference in this section to comparing the relative value of an optional form of benefit to the value of the QJSA may be satisfied using the substitution permitted under paragraph (c)(2)(ii)(B) or (C) of this section.

(B) *Substitution of single life annuity for married individual.* For a married participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA, the plan can compare the value of each optional form of benefit (including the QJSA) to the value of a QJSA for an unmarried participant (i.e., a single life annuity), but only if that same single life annuity is available to that married participant.

(C) *Substitution of joint and survivor annuity for unmarried individual.* For an unmarried participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA for that individual (which is a single life annuity), the plan can compare the value of each optional form of benefit (including the single life annuity) to the value of the joint and survivor annuity that is the QJSA for a married participant, but only if that same joint and survivor annuity is available to that unmarried participant.

➔ **Caution: Reg. Sec. 1.417(a)(3)-1(c)(2)(ii), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) *Use of one form for both married and unmarried individuals.* (A) *In general.* Under the rules of this paragraph (c)(2)(ii), in lieu of providing different QJSA explanations for married and unmarried individuals, the plan may provide a QJSA explanation to an individual that does not vary based on the participant's marital status. Except as specifically provided in this section, any reference in this section to comparing the relative value of an optional form of benefit to the value of the QJSA may be satisfied using the substitution permitted under paragraph (c)(2)(ii)(B) or (C) of this section.

(B) *Substitution of single life annuity for married individual.* For a married participant, in lieu of comparing the value of each optional form of benefit presently available to the participant to the value of the QJSA, the plan can compare the value of each optional form of benefit (including the QJSA) to the value of a QJSA for an

(2) of this section, the value of the annuity is available to that married participant.

(C) *Substitution of joint and survivor annuity for unmarried participant.* If the plan is comparing the value of an optional form of benefit presently available to the participant to the value of the QJSA for that individual (which is a single life annuity), the plan may compare the value of each optional form of benefit to the value of the joint and survivor annuity for a married participant, but only if that same annuity is available to that unmarried participant.

(D) *Simplified presentations permitted.* (A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have the same value may be grouped for purposes of a numerical comparison described in this paragraph (c) (2). For purposes of this paragraph, two or more optional forms of benefit have approximately the same value if none of those optional forms of benefit vary in relative value by more than 5 percent when the relative value comparison is made by expressing the relative value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA can be satisfied by disclosing the relative value of any one of the optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c) (2) (iii) (A) of this section, two or more optional forms of benefits are grouped, the relative values for all of the optional forms of benefit in the group can be stated using a representative relative value as the approximate relative value for the entire group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three grouped optional forms have relative values of 87.5%, 90%, and 91% of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90% of the value of the QJSA. As required under paragraph (c) (2) (iii) (A) of this section, if a single-sum distribution is included in the group of optional forms of benefit, the 90% relative factor of the value of the QJSA must be disclosed as the approximate relative value of the single sum, and the other forms can be described as having the same approximate value as the single sum.

➔ **Caution:** *Reg. Sec. 1.417(a)(3)-1(c)(2)(iii)(C), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.*

(C) *Special rules.* If the plan is comparing the value of each optional form to the value of the QJSA for a married participant, this paragraph (c) (2) (iii) (C) provides a grouping rule that is in addition to the grouping rules of paragraph (c) (2) (iii) (A) of this section. Under this special rule, the relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA for a married participant is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value. In addition, if a plan is comparing the value of optional forms of benefit to the value of the single life annuity and all optional forms of benefit have actuarial present values that are at least 95%, but not greater than 102.5%, of the actuarial present value of the single life annuity, the plan is permitted to describe the relative value of all optional forms of benefit by stating that all of the optional forms of benefit are approximately equal in value, or that all of those forms of benefit and the single life annuity are approximately equal in value.

➔ **Caution:** *Reg. Sec. 1.417(a)(3)-1(c)(2)(iii)(C), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.*

(C) *Special rule for optional forms of benefit that are close in value to the QJSA.* The relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA and no greater than 105% of the actuarial present value of the QJSA is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value.

➔ **Caution:** *Reg. Sec. 1.417(a)(3)-1(c)(2)(iv)(B), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.*

(iv) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA under this paragraph (c) (2), the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e) (3) and § 1.417(e)-1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)-1(d) (2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments).

➔ **Caution:** *Reg. Sec. 1.417(a)(3)-1(c)(2)(iv)(B), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.*

(iv) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA under this paragraph (c) (2), the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e) (3) and § 1.417(e)-1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)-1(d) (2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments). For this purpose, the reasonableness of interest and mortality assumptions is determined without regard to the circumstances of the individual participant. In addition, the applicable mortality table and the applicable interest rate as defined in § 1.417(e)-1(d) (2) and (3) are considered reasonable actuarial assumptions for this purpose and thus are permitted (but not required) to be used.

(v) *Required disclosure of assumptions.* (A) *Explanation of concept of relative value.* The notice must provide an explanation of the concept of relative value, communicating that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit presently available to a common form (such as the QJSA or a single-sum distribution), and that this conversion uses interest and life expectancy assumptions. The explanation of relative value must include a general statement that all comparisons provided are based on average life expectancies, and that the relative value of payments ultimately

made under an annuity optional form of benefit will depend on actual longevity.

(B) *Disclosure of assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under this paragraph (c) (2) is required to include a disclosure of the interest rate that is used to develop the comparison. If all optional forms of benefit are permitted to be grouped under paragraph (c) (2) (iii) (A) of this section, then the requirement of this paragraph (c) (2) (v) (B) does not apply for any optional form of benefit not subject to the requirements of section 417(e) (3) and § 1.417(e)-1(d) (3).

(C) *Offer to provide actuarial assumptions.* If the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c) (2) of this section, then, the notice must be accompanied by a statement that includes an offer to provide, upon the participant's request, the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(3) *Permitted estimates of financial effect and relative value.*

(i) *General rule.* For purposes of providing a description of the financial effect of the distribution forms available to a participant as required under paragraph (c) (1) (iii) of this section, and for purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA for a participant as required under paragraph (c) (1) (iv) of this section, the plan is permitted to provide reasonable estimates (e.g., estimates based on data as of an earlier date than the annuity starting date, a reasonable assumption for the age of the participant's spouse, or, in the case of a defined contribution plan, reasonable estimates of amounts that would be payable under a purchased annuity contract), including reasonable estimates of the applicable interest rate under section 417(e) (3).

(ii) *Right to more precise calculation.* If a QJSA notice uses a reasonable estimate under paragraph (c) (3) (i) of this section, the QJSA explanation must identify the estimate and explain that the plan will, upon the request of the participant, provide a more precise calculation and the plan must provide the participant with a more precise calculation if so requested. Thus, for example, if a plan provides an estimate of the amount of the QJSA that is based on a reasonable assumption concerning the age of the participant's spouse, the participant can request a calculation that takes into account the actual age of the spouse, as provided by the participant.

(iii) *Revision of prior information.* If a more precise calculation described in paragraph (c) (3) (ii) of this section materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value of that optional form must be disclosed, regardless of whether the financial effect of selecting the optional form is affected by the more precise calculation. For example, if a participant provides a plan with the age of the participant's spouse and that information materially changes the relative value of an optional form of benefit (such as a single sum) compared to the value of the QJSA, then the revised relative value of the optional form of benefit and the value of the QJSA must be disclosed, regardless of whether the amount of the payment under that optional form of benefit is affected by the more precise calculation.

(4) *Special rules for disclosure of financial effect for defined contribution plans.* For a written explanation provided by a defined contribution plan, a description of financial effect required by paragraph (c) (1) (iii) of this section with respect to an annuity form of benefit must include a statement that the annuity will be provided by purchasing an annuity contract from an insurance company with the participant's account balance under the plan. If the description of the financial effect of the optional form of benefit is provided using estimates rather than by assuring that an insurer is able to provide the amount disclosed to the participant, the written explanation must also disclose this fact.

➔ **Caution:** Reg. Sec. 1.417(a)(3)-1(c)(5), was added by T.D. 9256 (71 FR 14798) on March 24, 2006.

(5) *Simplified presentations of financial effect and relative value to enhance clarity for participants.* (i) *In general.* This paragraph (c) (5) permits certain simplified presentations of financial effect and relative value of optional forms of benefit to permit more useful presentations of

information to be provided to participants in certain cases in which a plan offers a range of optional forms of benefit. Paragraph (c) (5) (i) of this section permits simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit. Paragraph (c) (5) (iii) of this section permits simplified presentations of financial effect and relative value for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

(ii) *Disclosure for plans offering a significant number of substantially similar optional forms of benefit.* (A) *In general.* If a plan offers a significant number of substantially similar optional forms of benefit within the meaning of paragraph (c) (5) (ii) (B) of this section and disclosing the financial effect and relative value of each such optional form of benefit would provide a level of detail that could be overwhelming rather than helpful to participants, then the financial effect and relative value of those optional forms of benefit can be disclosed by disclosing the relative value and financial effect of a representative range of examples of those optional forms of benefit as described in paragraph (c) (5) (ii) (C) of this section if the requirements of paragraph (c) (5) (ii) (D) of this section (relating to additional information available upon request) are satisfied.

(B) *Substantially similar optional forms of benefit.* For purposes of this paragraph (c) (5) (ii), optional forms of benefit are substantially similar if those optional forms of benefit are identical except for a particular feature or features (with associated adjustment factors) and the feature or features vary linearly. For example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, those joint and survivor annuity options are substantially similar optional forms of benefit. Similarly, if a participant is entitled under the plan to receive a particular form of benefit with an annuity starting date that is the first day of any month beginning three years before commencement of a distribution and ending on the date of commencement of the distribution, those forms of benefit are substantially similar optional forms of benefit. [Corrected by IRS on 5/8/06 (71 FR 26688).]

(C) *Representative range of examples.* A range of examples with respect to substantially similar optional forms of benefit as permitted under this paragraph (c) (5) is representative only if it includes examples illustrating the financial effect and relative value of the optional forms of benefit that reflect each varying feature at both extremes of its linear range, plus at least one example illustrating the financial effect and relative value of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate the pattern of variation in relative value with respect to a varying feature, examples sufficient to illustrate such pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, and if all such optional forms of benefit would be permitted to be disclosed as approximately equal in value as described in paragraph (c) (5) (ii) (B) of this section, the plan could satisfy the requirement to disclose the financial effect and relative value of a representative range of examples of those optional forms of benefit by disclosing the financial effect and relative value with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and the joint and 100% survivor annuity.

(D) *Requirement to provide information with respect to other optional forms of benefit upon request.* If a QJSA explanation discloses the financial effect and relative value of substantially similar optional forms of benefit by disclosing the financial effect and relative value of a representative range of examples in accordance with this paragraph (c) (5) (ii), the QJSA explanation must explain that the plan will, upon the request of the participant, disclose the financial effect and relative value of any particular optional form of benefit from among the substantially similar optional forms of benefit and the plan must provide the participant with the financial effect and relative value of any such optional form of benefit if the participant so requests.

(iii) *Separate presentations permitted for elections with respect to parts of a benefit.* If the plan permits the participant to make separate benefit elections with respect to two or more portions of the participant's benefit, the description of the financial effect and relative value

in which the benefit can be made separately for each such optional form of benefit, rather than for each optional form of benefit (i.e., for each combination of possible elections).

(i) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation.* (1) *Forms of benefit.* In lieu of providing the information required under paragraphs (c)(1)(i) through (v) of this section for each optional form of benefit presently available to the participant as described in paragraph (c)(1)(i) of this section, the QJSA explanation may contain the information required under paragraphs (c)(1)(i) through (v) of this section for the QJSA and each other optional form of benefit generally available under the plan, along with a reference to where a participant may obtain the information required under paragraphs (c)(1)(i) through (v) of this section for any other optional forms of benefit that are presently available to the participant.

(2) *Financial effect and comparison of relative values.*

(i) *General rule.* In lieu of providing a statement of the financial effect of electing an optional form of benefit as required under paragraph (c)(1)(iii) of this section, or a comparison of relative values as required under paragraph (c)(1)(iv) of this section, based on the actual age and benefit of the participant, the QJSA explanation is permitted to include a chart (or other comparable device) showing the financial effect and relative value of optional forms of benefit in a series of examples specifying the amount of the optional form of benefit payable to a hypothetical participant at a representative range of ages and the comparison of relative values at those same representative ages. Each example in this chart must show the financial effect of electing the optional form of benefit pursuant to the rules of paragraph (c)(1)(iii) of this section, and a comparison of the relative value of the optional form of benefit to the value of the QJSA pursuant to the rules of paragraph (c)(2) of this section, using reasonable assumptions for the age of the hypothetical participant's spouse and any other variables that affect the financial effect, or relative value, of the optional form of benefit. The requirement to show the financial effect of electing an optional form can be satisfied through the use of other methods (e.g., expressing the amount of the optional form as a percentage or a factor of the amount payable under the normal form of benefit), provided that the method provides sufficient information so that a participant can determine the amount of benefits payable in the optional form. The chart (or other comparable device) must be accompanied by the disclosures described in paragraph (c)(2)(v) of this section explaining the concept of relative value and disclosing certain interest assumptions. In addition, the chart (or other comparable device) must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of the optional form of benefit to the value of the QJSA.

➔ **Caution: Reg. Sec. 1.417(a)(3)-1(d)(2)(ii), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately.

➔ **Caution: Reg. Sec. 1.417(a)(3)-1(d)(2)(ii), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit

adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately. Reasonable estimates of the type described in paragraph (c)(3)(i) of this section may be used to determine the amount payable to the participant under the normal form of benefit for purposes of this paragraph (d)(2)(ii) if the requirements of paragraphs (c)(3)(ii) and (iii) of this section are satisfied with respect to those estimates.

(iii) *Ability to request additional information.* The generalized notice described in this paragraph (d)(2) must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect and a comparison of relative values that is specific to the participant for any presently available optional form of benefit, and a description of how a participant may obtain this additional information.

(3) *Financial effect of QPSA election.* In lieu of providing a specific description of the financial effect of the QPSA election, the QPSA explanation may provide a general description of the financial effect of the election. Thus, for example, the description can be in the form of a chart showing the reduction to a hypothetical participant's normal retirement benefit at a representative range of participant ages as a result of the QPSA election (using a reasonable assumption for the age of the hypothetical participant's spouse relative to the age of the hypothetical participant). In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, an estimate of the reduction to the participant's estimated normal retirement benefit, and a description of how a participant may obtain this additional information.

(4) *Additional information required to be furnished at the participant's request.* The generalized notice described in paragraph (d)(2) of this section must be accompanied by a statement that includes an offer to provide, upon the participant's request, information described in this paragraph (d)(4)(i) and (ii), and a description of how a participant may obtain this additional information.

(i) *Explanation of QJSA.* If, as permitted under paragraphs (d)(1) and (2) of this section, the content of a QJSA explanation does not include all the items described in paragraph (c) of this section, then, upon a participant's request for any of the information required under paragraphs (c)(1)(i) through (v) of this section for one or more presently available optional forms (including a request for all optional forms presently available to the participant), the plan must furnish the information required under paragraphs (c)(1)(i) through (v) of this section with respect to those optional forms. Thus, with respect to those optional forms of benefit, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section. Further, if as permitted under paragraph (c)(2)(v)(B) of this section, the plan does not disclose the actuarial assumptions used to calculate the numerical comparison required under paragraph (c)(2) of this section, then, upon request, the plan must provide the actuarial assumptions used to calculate the relative value of optional forms of benefit under the plan.

(ii) *Explanation of QPSA.* If, as permitted under paragraph (d)(3) of this section, the content of a QPSA explanation does not include all the items described in paragraph (b)(1) of this section, then, upon a participant's request, the plan must furnish an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election.

➔ **Caution: Reg. Sec. 1.417(a)(3)-1(d)(5), was added by T.D. 9256 (71 FR 14798) on March 24, 2006.**

(5) *Use of participant-specific information in generalized notice.* A QJSA explanation does not fail to satisfy the requirements of this paragraph (d) merely because it contains an item of participant-specific information in place of the corresponding generally applicable information.

(e) *Examples.* The following examples illustrate the application of this section. Solely for purposes of these examples, the applicable interest rate that applies to any distribution that is subject to the rules of section 417(e)(3) is assumed to be 5 1/2%, and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d)(2) is assumed to be the table that applies as of January 1, 2003. In addition, solely for purposes of these examples, assume that a plan which determines actuarial equivalence using 6% interest and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d)(2) that applies as of January 1, 1995, is using reasonable actuarial assumptions. The examples are as follows:

*Example 1.* (i) Participant M participates in Plan A, a qualified defined benefit plan. Under Plan A, the QJSA is a joint and 100% survivor annuity, which is actuarially equivalent to the single life annuity determined using 6% interest and the section 417(e)(3) applicable mortality table that applies as of January 1, 1995. On October 1, 2004, M will terminate employment at age 55. When M terminates employment, M will be eligible to elect an unreduced early retirement benefit, payable as either a single life annuity or the QJSA. M will also be eligible to elect a single-sum distribution equal to the actuarial present value of the single life annuity payable at normal retirement age (age 65), determined using the applicable mortality table and the applicable interest rate under section 417(e)(3).

(ii) Consistent with paragraph (c) of this section, Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution options under the plan, and any eligibility conditions associated with these options. Participant M is married when the explanation is provided. The explanation indicates that, if Participant M commenced benefits at age 55 and had a spouse age 55, the monthly benefit under an immediately commencing single life annuity is \$3,000, the monthly benefit under the QJSA is estimated to be 89.96% of the monthly benefit under the immediately commencing single life annuity or \$2,699, and the single sum is estimated to be 74.7645 times the monthly benefit under the immediately commencing single life annuity or \$224,293.

(iii) The QJSA explanation indicates that the single life annuity and the QJSA are of approximately the same value, but that the single-sum option is equivalent in value to a monthly benefit under the QJSA of \$1,215. (This amount is 45% of the value of the QJSA at age 55 (\$1,215 divided by 89.96% of \$3,000 equals 45%).) The explanation states that the relative value comparison converts the value of the single life annuity and the single-sum options to the value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

(iv) In accordance with paragraph (c)(3)(ii) of this section, Participant M requests a more precise calculation of the financial effect of choosing a QJSA taking into account that Participant M's spouse is 50 years of age. Using the actual age of Participant M's spouse, Plan A determines that the monthly payments under the QJSA are 87.62% of the monthly payments under the single life annuity, or \$2,628.60 per month, and provides this information to M. Plan A is not required to provide an updated calculation of the relative value of the single sum because the value of single sum continues to be 45% of the value of the QJSA.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the comparison of the relative values of optional forms of benefit to the

value of the QJSA is not expressed as a percentage of the actuarial present value of the QJSA, but instead is expressed by disclosing the actuarial present values of the optional forms and the QJSA. In addition, the Plan uses the applicable interest rate and the applicable mortality table under section 417(e)(3) for all comparison purposes.

(ii) Accordingly, the QJSA explanation indicates that the QJSA has an actuarial present value of \$498,089, while the single-sum payment has an actuarial present value of \$224,293 (i.e. the amount of the single sum is \$224,293) and that the single life annuity is approximately equal in value to the QJSA. The explanation states that the relative value comparison converts the value of single life annuity and the QJSA into an amount payable in the form of the single-sum option (even though a single-sum distribution in that amount is not available under the plan) and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations were prepared using 5.5% interest and average life expectancy, and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

*Example 3.* The facts are the same as in *Example 1*, except that, in lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is \$3,000, along with the following chart. The chart shows the financial effect of electing each optional form of benefit for a hypothetical participant with a \$1,000 benefit and a spouse who is the same age as the participant. Instead of showing the relative value of these optional forms of benefit compared to the value of the QJSA, the chart shows the relative value of these optional forms of benefit compared to the value of the single life annuity. Separate charts are provided for ages 55, 60, and 65 as follows:

Age 55 Commencement

| Optional Form                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                                     |
|----------------------------------------|---------------------------------------------------------------------|----------------------------------------------------|
| Life Annuity                           | \$1,000 per month                                                   | n/a                                                |
| QJSA (Joint and 100% survivor annuity) | \$900 per month (\$900 per month for survivor annuity)              | approximately the same value as the Life Annuity   |
| Lump sum                               | \$ 74,764                                                           | approximately 45% of the value of the Life Annuity |

Age 60 Commencement

| Optional Form                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                                     |
|----------------------------------------|---------------------------------------------------------------------|----------------------------------------------------|
| Life annuity                           | \$1,000 per month                                                   | n/a                                                |
| QJSA (Joint and 100% survivor annuity) | \$878 per month (\$878 per month for survivor annuity)              | approximately the same value as the Life Annuity   |
| Lump sum                               | \$99,792                                                            | approximately 45% of the value of the Life Annuity |

Age 65 Commencement

| Optional Form                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                                   |
|----------------------------------------|---------------------------------------------------------------------|--------------------------------------------------|
| Life Annuity                           | \$1,000 per month                                                   | n/a                                              |
| QJSA (Joint and 100% survivor annuity) | \$852 per month (\$852 per month for survivor annuity)              | approximately the same value as the Life Annuity |
| Lump sum                               | \$135,759                                                           | approximately the same value as the Life Annuity |

(ii) In accordance with paragraph (d) (4) (i) of this section, when Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100% survivor annuity, and the single-sum distribution and provides the age of M's spouse, Plan A determines that M's QJSA is \$2,628.60 per month and the single-sum distribution is \$224,293. The actuarial present value of the QJSA (determined using the 5.5% interest and the section 417(e) (3) applicable mortality table) is \$498,896 and the actuarial present value of the single life annuity is \$497,876. Accordingly, the specific information discloses that the single-sum distribution has a value that is 45% of the value of the single life annuity available to M on October 1, 2004. In accordance with paragraph (c) (2) (iii) (C) of this section, the QJSA notice provides that the QJSA is of approximately the same value as the single life annuity.

**Example 4.** The facts are the same as in *Example 1*, except that under Plan A, the single-sum distribution is determined as the actuarial present value of the immediately commencing single life annuity. In addition, Plan A provides a joint and 75% survivor annuity that is reduced from the single life annuity and that is the QJSA under Plan A. For purposes of determining the amount of the QJSA, if the participant is married the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in Plan A for determining actuarial equivalence of optional forms.

►► **Caution: Reg. Sec. 1.417(a)(3)-1(e)(Example 4)(ii), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d) (2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is \$3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a \$1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c) (2) (ii) of this section. Separate charts are provided for ages 55, 60, and 65, as follows:

►► **Caution: Reg. Sec. 1.417(a)(3)-1(e)(Example 4)(ii), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.**

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation requirement in accordance with paragraph (d) (2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is \$3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a \$1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c) (2) (iii) of this section. Separate charts are provided for ages 55, 60, and 65, as follows:

Age 55 Commencement

| Optional Form                                                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                           |
|------------------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------|
| Life Annuity                                                           | \$1,000 per month                                                   | approximately the same value as the QJSA |
| QJSA (joint and 75% survivor annuity for a participant who is married) | \$956 per month (\$717 per month for survivor annuity)              | n/a                                      |
| Joint and 100% survivor annuity                                        | \$886 per month (\$886 per month for survivor annuity)              | approximately the same value as the QJSA |
| Lump sum                                                               | \$165,959                                                           | approximately the same value as the QJSA |

Age 60 Commencement

| Optional Form                                                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                             |
|------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------|
| Life annuity                                                           | \$1,000 per month                                                   | approximately 94% of the value of the QJSA |
| QJSA (joint and 75% survivor annuity for a participant who is married) | \$945 per month (\$709 per month for survivor annuity)              | n/a                                        |
| Joint and 100% survivor annuity                                        | \$859 per month (\$859 per month for survivor annuity)              | approximately 94% of the value of the QJSA |
| Lump sum                                                               | \$151,691                                                           | approximately the same value as the QJSA   |

Age 65 Commencement

| Optional Form                                                          | Amount of distribution per \$1,000 of immediate single life annuity | Relative Value                             |
|------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------|
| Life Annuity                                                           | \$1,000 per month                                                   | approximately 93% of the value of the QJSA |
| QJSA (joint and 75% survivor annuity for a participant who is married) | \$932 per month (\$699 per month for survivor annuity)              | n/a                                        |
| Joint and 100% survivor annuity                                        | \$828 per month (\$828 per month for survivor annuity)              | approximately 93% of the value of the QJSA |
| Lump sum                                                               | \$135,759                                                           | approximately 93% of the value of the QJSA |

(iii) The chart disclosing the financial effect and relative value of the optional forms specifies that the calculations were prepared assuming that the spouse is three years younger than the participant, that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate, and that the relative value of actual payments for an individual can vary depending on how long the individual and spouse live. The explanation states that the relative value comparison converts the single life annuity, the joint and 100% survivor annuity, and the single-sum options to value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation notes that the calculation of the QJSA depends on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a calculation specific to the participant upon request, and an

offer to provide mortality tables used in preparing calculations upon request.

(iv) In accordance with paragraph (d)(4)(i) of this section, Participant M requests specific information regarding the amounts payable under the QJSA, the joint and 100% survivor annuity, and the single sum.

(v) Based on the information about the age of Participant M's spouse, Plan A determines that M's QJSA is \$2,856.30 per month, the joint and 100% survivor annuity is \$2,628.60 per month, and the single sum is \$497,876. The actuarial present value of the QJSA (determined using the 5.5% interest and the section 417(e)(3) applicable mortality table, the actuarial assumptions required under section 417) is \$525,091. Accordingly, the value of the single-sum distribution available to M on October 1, 2004, is 94.8% of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100% joint and survivor annuity are 95.0% of the actuarial present value of the QJSA.

(vi) Plan A provides M with a QJSA explanation that incorporates these more precise calculations of the financial effect and relative value of the optional forms for which M requested information.

\*\*\* **Caution:** Reg. Sec. 1.417(a)(3)-1(f), prior to amendment by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.

(f) *Effective date.* This section applies to QJSA explanations with respect to distributions with annuity starting dates on or after October 1, 2004, and to QPSA explanations provided on or after July 1, 2004. In the case of a retroactive annuity starting date under section 417(a)(7), when required under § 1.417(e)-1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date for this purpose.

\*\*\* **Caution:** Reg. Sec. 1.417(a)(3)-1(f), as amended by T.D. 9256 (71 FR 14798), March 24, 2006, appears below.

(f) *Effective date.* (1) *General effective date for QJSA explanations.*

(i) *In general.* Except as otherwise provided in this paragraph (f), this section applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006.

(ii) *Reasonable, good faith transition rule.* Except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of paragraph (f)(2) of this section, a reasonable, good faith effort to comply with these regulations will be deemed to satisfy the requirements of these regulations for QJSA explanations provided before January 1, 2007, with respect to distributions with annuity starting dates that are on or after February 1, 2006. For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with § 1.417(a)(3)-1 as it appeared in 26 CFR Part 1 revised April 1, 2004.

(2) *Special effective date for certain QJSA explanations.*

(i) *Application to QJSA explanations with respect to certain optional*

[Reserved. Temporary regulations under Code Sec. 417 relating to effective dates, transitional rules, restrictions on distribution rules and other issues arising under the Retirement Equity Act of 1984 were formerly reproduced here. The temporary regulations were removed by T.D. 8219 (53 FR 31837).]

## Regulations

The following regulations under Code Sec. 417 were adopted on August 22, 1988 by T.D. 8219 (53 FR 31837). Amended April 5, 1995 by T.D. 8591 (60 FR 17216), September 22, 1995 by T.D. 8620 (60 FR 49218), April 7, 1998 by T.D. 8768 (63 FR 16895), July 19, 2000 by T.D. 8891 (65 FR 44679), July 16, 2003 by T.D. 9076 (68 FR 41906), and Dec. 17, 2003 by T.D. 9099 (68 FR 70141).

### ¶ 12,556

§ 1.417(e)-1. **Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.** (a) *Scope.* (1) *In general.* A plan does not satisfy the requirements of sections 401(a)(11) and 417 unless it satisfies the consent requirements, the determination of present value requirements and the other requirements set forth in this section. See section 401(a)(11) and § 1.401(a)-11A for other rules regarding the survivor annuity requirements.

(2) *Additional requirements.* See § 1.411(a)-11 for other rules applicable to the consent requirements.

### ¶ 12,556 Reg. § 1.417(a)(3)-1(f)

*forms that are less valuable than the QJSA.* This section also applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, if the actuarial present value of any optional form of benefit that is subject to the requirements of section 417(e)(3) is less than the actuarial present value (as determined under § 1.417(e)-1(d)) of the QJSA. For purposes of this paragraph (f)(2)(i), the actuarial present value of an optional form is treated as not less than the actuarial present value of the QJSA if—

(A) Using the applicable interest rate and applicable mortality table under § 1.417(e)-1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant; and

(B) Using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

(ii) *Requirement to disclose differences in value for certain optional forms.* A QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, is only required to be provided under this section with respect to—

(A) An optional form of benefit that is subject to the requirements of section 417(e)(3) and that has an actuarial present value that is less than the actuarial present value of the QJSA (as described in paragraph (f)(2)(i) of this section); and

(B) The QJSA (determined without application of paragraph (c)(2)(ii) of this section).

(iii) *Application to QJSA explanations with respect to optional forms that are approximately equal in value to the QJSA.* Paragraph (c)(2)(iii)(C) of this section, relating to disclosures of optional forms of benefit that are permitted to be described as approximately equal in value to the QJSA, is not applicable to a QJSA explanation provided before January 1, 2007. However, § 1.417(a)(3)-1(c)(2)(iii)(C), as it appeared in 26 CFR part 1 revised April 1, 2004, applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and that is provided before January 1, 2007.

(3) *Annuity starting date.* For purposes of paragraphs (f)(1) and (2) of this section, in the case of a retroactive annuity starting date under section 417(a)(7), as described in § 1.417(e)-1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date.

(4) *Effective date for QPSA explanations.* This section applies to any QPSA explanation provided on or after July 1, 2004.

.01 **Historical Comment:** Revised 3/24/06 by T.D. 9256 and corrected 5/8/06 (71 FR 26688). Amended 10/20/2006 by T.D. 9294 (71 FR 61877).

(3) *Accrued benefit.* The definition of "accrued benefit" in § 1.411(a)-11 applies when that term is used in this section.

(b) *Consent, etc. requirements.* (1) *General rule.* Generally, plans may not commence the distribution of any portion of a participant's accrued benefit in any form unless the applicable consent requirements are satisfied. No consent of the participant or spouse is needed for distribution of a QJSA or QPSA after the benefit is no longer immediately distributable (after the participant attains (or would have attained if not dead) the later of normal retirement age (as defined in section 411(a)(8)) or age 62). No consent of the spouse is needed for distribution of a QJSA at any time. After the participant's death, a benefit may be paid to a nonspouse beneficiary without the beneficiary's consent.

**RETROACTIVE ANNUITY STARTING DATE  
REGULATIONS**

menced on the retroactive annuity starting date. Similarly, annuity payments that otherwise satisfy the requirements of a QJSA under section 417(b) will not fail to be treated as a QJSA for purposes of section 415(b)(2)(B) merely because a retroactive annuity starting date is elected and a make-up payment is made. Also, for purposes of section 72(t)(2)(A)(iv), a distribution that would otherwise be one of a series of substantially equal periodic payments will be treated as one of a series of substantially equal periodic payments notwithstanding the distribution of a make-up payment provided for in paragraph (b)(3)(iv)(B) of this section.

(E) The following example illustrates the application of paragraph (b)(3)(iv)(D) of this section:

**Example.** Under the terms of a defined benefit plan, participant A is entitled to a QJSA with a monthly payment of \$1,500 beginning as of his annuity starting date. Due to administrative error, the QJSA explanation is provided to A after the annuity starting date. After receiving the QJSA explanation A elects a retroactive annuity starting date. Pursuant to this election, A begins to receive a monthly payment of \$1,500 and also receives a make-up payment of \$10,000. Under these circumstances the monthly payments may be treated as a QJSA for purposes of section 415(b)(2)(B). In addition, the monthly payments of \$1,500 and the make-up payment of \$10,000 may be treated as part of a series of substantially equal periodic payments for purpose of section 72(t)(2)(A)(iv). [Added 7/16/2003 by T.D. 9076.]

(v) *Requirements applicable to retroactive annuity starting dates.* A distribution is permitted to have a retroactive annuity starting date with respect to a participant's benefit only if the following requirements are met:

(A) The participant's spouse (including an alternate payee who is treated as the spouse under a qualified domestic relations order (QDRO), as defined in section 414(p)), determined as if the date distributions commence were the participant's annuity starting date, consents to the distribution in a manner that would satisfy the requirements of section 417(a)(2). The spousal consent requirement of this paragraph (b)(3)(v)(A) is satisfied if such spouse consents to the distribution under paragraph (b)(2)(i) of this section. The spousal consent requirement of this paragraph (b)(3)(v)(A) does not apply if the amount of such spouses survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would satisfy the requirements to be a QJSA under section 417(b) and that has an annuity starting date after the date that the explanation was provided.

(B) The distribution (including appropriate interest adjustments) provided based on the retroactive annuity starting date would satisfy the requirements of section 415 if the date the distribution commences is substituted for the annuity starting date for all purposes, including for purposes of determining the applicable interest rate and the applicable mortality table. However, in the case of a form of benefit that would have been excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply section 415 as of the date distribution commences set forth in this paragraph (b)(3)(v)(B) does not apply if the date distribution commences is twelve months or less from the retroactive annuity starting date.

(C) In the case of a form of benefit that would have been subject to section 417(e)(3) and paragraph (d) of this section if distributions had commenced as of the retroactive annuity starting date, the distribution is no less than the benefit produced by applying the applicable interest rate and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. Thus, for example, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the straight life annuity payable at normal retirement age, then the amount of the distribution must be no less than the present value of the annuity payable at normal retirement age, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date. Likewise, if a distribution paid pursuant to an election of a retroactive annuity start-

ing date is a single-sum distribution that is based on the present value of the early retirement annuity payable as of the retroactive annuity starting date, then the amount of the distribution must be no less than the present value of the early retirement annuity payable as of the distribution date, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date. [Added 7/16/2003 by T.D. 9076.]

(vi) *Timing of notice and consent requirements in the case of retroactive annuity starting dates.* In the case of a retroactive annuity starting date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in paragraphs (b)(3)(i) and (ii) of this section, except that the substitution does not apply for purposes of paragraph (b)(3)(iii) of this section. Thus, the written explanation required by section 417(a)(3)(A) must generally be provided no less than 30 days and no more than 90 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of paragraph (b)(3)(ii) of this section would be satisfied if the date of the first payment is substituted for the annuity starting date. [Added 7/16/2003 by T.D. 9076.]

(vii) *Administrative delay.* A plan will not fail to satisfy the 90-day timing requirements of paragraphs (b)(3)(iii) and (vi) of this section merely because, due solely to administrative delay, a distribution commences more than 90 days after the written explanation of the QJSA is provided to the participant. [Added 7/16/2003 by T.D. 9076.]

(viii) The following example illustrates the provisions of this paragraph (b)(3): [Redesignated 7/16/2003 by T.D. 9076.]

**Example.** Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28. Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule. [Amended 12/18/98 by T.D. 8796.]

(ix) The additional rules of this paragraph (b)(3) concerning the notice and consent requirements of section 417 apply to distributions on or after September 22, 1995. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in §1.417(e)-1(b)(3) in effect prior to September 22, 1995 (see §1.417(e)-1(b)(3) in 26 CFR Part 1 revised as of April 1, 1995) apply. [Amended 12/18/98 by T.D. 8796. Redesignated 7/16/2003 by T.D. 9076.]

(4) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See §601.601(d)(2)(ii)(b) of this chapter. [Amended 9/22/95 by T.D. 8620 and 12/18/98 by T.D. 8796.]

(c) *Permitted distributions.* A plan may not require that a participant or surviving spouse begin to receive benefits without satisfying paragraph (b) of this section while such benefits are immediately distributable, (see paragraph (b)(1) of this section). Once benefits are no longer immediately distributable, all benefits that the plan requires to begin must be provided in the form of a QJSA and QPSA unless the applicable written explanation, election and consent requirements of section 417 are satisfied.

(d) *Present value requirement.* (1) *General rule.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this

section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) **Applicable mortality table.** The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). The Commissioner may prescribe rules that apply in the case of a change to the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(3) **Applicable interest rate.** (i) **General rule.** The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(ii) **Example.** This example illustrates the rules of this paragraph (d)(3):

**Example.** Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95-6 (1995-1 C.B. 80), and that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of \$1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single sum received by P may not be less than \$111,351.

(4) **Time for determining interest rate.** (i) **General rule.** Except as provided in paragraph (d)(4)(iv) or (v) of this section, the applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) **Stability period.** A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year.

(iii) **Lookback month.** A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv) **Permitted average interest rate.** A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average interest rate with respect to the plan's stability period for the rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average interest rate with respect to a stability period is an interest rate that is computed by averaging the applicable interest rates determined

under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(iv) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(v) **Additional determination dates.** The Commissioner may prescribe, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), other times that a plan may provide for determining the applicable interest rate.

(vi) **Example.** This example illustrates the rules of this paragraph (d)(4):

**Example.** Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) **Use of alternative interest rate and mortality table.** If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit produced by using the applicable interest rate and the applicable mortality table. For example, if a plan provides for use of an interest rate of 7% and the UP-1984 Mortality Table (see § 1.401(a)(4)-12, *Standard mortality table*) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using 7% and the UP-1984 Mortality Table and the single-sum benefit calculated using the applicable interest rate and the applicable mortality table.

(6) **Exceptions.** This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that—

(i) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(ii) Decreases during the life of the participant merely because of—

(A) The death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant); or

(B) The cessation or reduction of Social Security supplements or qualified disability benefits (as defined in section 411(a)(9)).

(7) **Defined contribution plans.** Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), even though it is subject to section 401(a)(11).

(8) **Effective date.** (i) **In general.** This paragraph (d) is effective for distributions with annuity starting dates in plan years beginning after December 31, 1994.

(ii) **Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94) (108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994.** For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the applicable mortality table and applicable interest rate under paragraphs (d)(2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) and § 1.417(e)-1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before

## **EXCERPT OF ADMINISTRATIVE PROVISIONS**

**VOLUME SUBMITTER  
DEFINED CONTRIBUTION PLAN**

**FIDELITY BASIC PLAN DOCUMENT NO. 14**

The CORPORATEplan for Retirement<sup>SM</sup>

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of a letter, three business days shall have elapsed after the same shall have been deposited in the United States mail, first-class postage prepaid and registered or certified:

(a) If to the Employer or Administrator, to it at the address as the Administrator shall direct pursuant to the Service Agreement;

(b) If to the Trustee, to it at the address set forth in Subsection 1.03(a) of the Adoption Agreement;

or, in each case at such other address as the addressee shall have specified by written notice delivered in accordance with the foregoing to the addressor's then effective notice address.

Any direction, notice or other communication provided to the Employer, the Administrator or the Trustee by another party which is stipulated to be in written form under the provisions of this Plan may also be provided in any medium which is permitted under applicable law or regulation. Any written communication or disclosure to Participants required under the provisions of this Plan may be provided in any other medium (electronic, telephone or otherwise) that is permitted under applicable law or regulation.

**18.11. Governing Law.** The Plan and the accompanying Adoption Agreement shall be construed, administered and enforced according to ERISA, and to the extent not preempted thereby, the laws of the Commonwealth of Massachusetts.

**18.12. Discharge of Duties by Fiduciaries.** The Trustee, the Employer and any other fiduciary shall discharge their duties under the Plan in accordance with the requirements of ERISA solely in the interests of Participants and their Beneficiaries and with the care, skill, prudence, and diligence under the applicable circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise of like character with like aims.

#### **Article 19. Plan Administration.**

**19.01. Powers and Responsibilities of the Administrator.** The Administrator has the full power and the full responsibility to administer the Plan in all of its details, subject, however, to the requirements of ERISA. The Administrator is the agent for service of legal process for the Plan. In addition to the powers and authorities expressly conferred upon it in the Plan, the Administrator shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the discretionary power and authority to interpret and construe the provisions of the Plan, such interpretation to be final and conclusive on all persons claiming benefits under the Plan; to make benefit determinations; to utilize the correction programs or systems established by the Internal Revenue Service (such as the Employee Plans Compliance and Resolution System) or the Department of Labor; and to resolve any disputes arising under the Plan. The Administrator may, by written instrument, allocate and delegate its fiduciary responsibilities in accordance with ERISA Section 405, including allocation of such responsibilities to an administrative committee formed to administer the Plan.

**19.02. Nondiscriminatory Exercise of Authority.** Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated shall receive substantially the same treatment.

**19.03. Claims and Review Procedures.** As required under Section 2560.503-1(b)(2) of Regulations issued by the Department of Labor, the claims and review procedures are described in detail in the Summary Plan Description for the Plan.

**19.04. Named Fiduciary.** The Administrator is a "named fiduciary" for purposes of ERISA Section 402(a)(1) and has the powers and responsibilities with respect to the management and operation of the Plan described herein.

The CORPORATEplan for Retirement<sup>SM</sup>