

for purposes of satisfying the minimum contribution or benefit requirement of section 416(c)(2)?

A. Elective contributions on behalf of key employees are taken into account in determining the minimum required contribution under section 416(c)(2). However, elective contributions on behalf of employees other than key employees may not be treated as employer contributions for purposes of the minimum contribution or benefit requirement of section 416. See section 401(k)(4)(C) and the regulations thereunder. This Question and Answer is effective for plan years beginning after December 31, 1988.

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§ 1.417(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 exceptions 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.

(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.

(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 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.

(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 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.

(iii) *Simplified presentations permitted*—(A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have approximately the same value may be grouped for purposes of a required numerical comparison described in this paragraph (c)(2). For this purpose, two or more optional forms of benefit have approximately the same value if none of those optional forms of benefit vary in relative value in comparison to the value of the QJSA by more than 5 percentage points when the relative value comparison is made by expressing the actuarial

present 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 percent, 89 percent, and 91 percent of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90 percent 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 percent 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.

(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.

(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.

(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)(ii) 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.

(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 that apply 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 values of optional forms of benefit can be made separately for each such portion of the benefit, rather than for each optional form of benefit (i.e., each combination of possible elections).

(d) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation—(1) Forms of benefit available.* 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) 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 readily 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.

(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.

(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 52½ percent, 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 percent 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 percent survivor annuity, which is actuarially equivalent to the single life annuity determined using 6 percent 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 percent 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 percent of the value of the QJSA at age 55 (\$1,215 divided by 89.96 percent of \$3,000 equals 45 percent.) 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 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent 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 percent 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 percent 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

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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 percent 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 actu-

ally 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. (i) 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 percent 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 percent 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 percent survivor annuity) | \$878 per month (\$878 per month for survivor annuity) | Approximately the same value as the Life Annuity. |
| Lump sum | \$99,792 | Approximately 66 percent 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 percent 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 percent 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

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percent 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 percent 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. (i) 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 percent 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 de-

termining actuarial equivalence of optional forms.

(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 percent survivor annuity for a participant who is married). | \$956 per month (\$717 per month for survivor annuity). | n/a. |
| Joint and 100 percent 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 percent of the value of the QJSA. |
| QJSA (joint and 75 percent survivor annuity for a participant who is married). | \$945 per month (\$709 per month for survivor annuity). | n/a. |
| Joint and 100 percent survivor annuity | \$859 per month (\$859 per month for survivor annuity). | Approximately 94 percent 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 percent of the value of the QJSA. |
| QJSA (joint and 75 percent survivor annuity for a participant who is married). | \$932 per month (\$699 per month for survivor annuity). | n/a. |
| Joint and 100 percent survivor annuity | \$828 per month (\$828 per month for survivor annuity). | Approximately 93 percent of the value of the QJSA. |
| Lump sum | \$135,759 | Approximately 93 percent 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 percent interest and average life expectancy, that the other calculations were prepared using a 6 percent 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 percent 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 percent 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 percent 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 percent 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 percent of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100 percent joint and survivor annuity are 95.0 percent 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.

(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 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,

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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.

[T.D. 9099, 68 FR 70144, Dec. 17, 2003, as amended by T.D. 9256, 71 FR 14802, Mar. 24, 2006; 71 FR 26688, May 8, 2006; T.D. 9294, 71 FR 61888, Oct. 20, 2006]

§ 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)-20 for other rules regarding the survivor annuity requirements.

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

(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. A distribution cannot be made at any time in a form other than a QJSA unless such QJSA has been waived by the participant and such waiver has been consented to by the spouse. A QJSA is an annuity that commences immediately. Thus, for example, a plan may not offer a participant separating from service at age 45 a choice only between a single sum distribution at separation of service and a joint and survivor annuity that satisfies all the requirements of a QJSA except that it commences at normal retirement age rather than immediately. To satisfy this section, the plan must also offer a QJSA (*i.e.*, an annuity that satisfies all the requirements for a QJSA including the requirement that it commences immediately).

(2) *Consent.* (i) Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a QJSA, the participant’s spouse (or, if either the participant or the spouse has died, the survivor) is required before the commencement of the distribution of any part of an accrued benefit if the present value of the