

Notice of Proposed Rulemaking and Notice of Public Hearing

Disclosure of Relative Values of Optional Forms of Benefit

REG-124667-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and would specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled

for January 14, 2003, at 10 a.m., must be received by January 2, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-124667-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (REG-124667-02), room 5226, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: www.irs.gov/regs. The public hearing will be held in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, 202-622-6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collections of information should be received by December 6, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.417(a)(3)-1. This information is required by the IRS to comply with the requirements of section 417(a)(3) regarding explanations that must be provided to participants in a qualified plan prior to a waiver of a qualified joint and survivor annuity (QJSA) or a qualified preretirement survivor annuity (QPSA). This information will be used by participants and spouses of participants to determine whether to waive a QJSA or QPSA, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The collections of information are mandatory. The respondents are nonprofit institutions.

Estimated total annual reporting burden: 375,000 hours.

The estimated annual burden per respondent varies from .01 to .99 hours, depending on individual circumstances, with an estimated average of .5 hours.

Estimated number of respondents: 750,000.

The estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 417(a)(3) of the Internal Revenue Code of 1986 (Code).

A qualified retirement plan to which section 401(a)(11) applies must pay a vested participant's retirement benefit under the plan in the form of a qualified joint and survivor annuity (QJSA), except as provided in section 417. Section 401(a)(11) applies to defined benefit plans, money purchase pension plans, and certain other defined contribution plans. A QJSA is defined in section 417(b) as an annuity for the life of the participant with a survivor annuity for the life of the spouse (if the participant is married) that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse. Under section 417(b)(2), a QJSA for a married participant generally must be the actuarial equivalent of the single life annuity benefit payable for the life of the participant. However, a plan is permitted to subsidize the QJSA for a married participant. If the plan fully subsidizes the QJSA for a married participant so that failure to waive the QJSA would not result in reduced payments over the life of the participant compared to the single life annuity benefit, then the plan need not provide an election to waive the QJSA. See section 417(a)(5).

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. See § 1.401(a)-20, Q&A-16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, see § 1.417(e)-1(d) for actuarial assumptions required for use in certain present value calculations.

If a plan provides a subsidy for one optional form of benefit (*i.e.*, the payments under an optional form of benefit have an actuarial present value that is greater than the actuarial present value of the accrued benefit), there is no requirement to extend a similar subsidy (or any subsidy) to every other optional form of benefit. Thus, for example, a participant might be entitled to receive a single-sum distribution upon early retirement that does not re-

fect any early retirement subsidy in lieu of a QJSA that reflects a substantial early retirement subsidy. As a further example, a participant might be entitled to receive a single-sum distribution at normal retirement age in lieu of a QJSA that is subsidized as described in section 417(a)(5).

Section 417(a) provides rules under which a participant (with spousal consent) may waive payment of the participant's benefit in the form of a QJSA. Section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date (and consistent with such regulations as the Secretary may prescribe) a written explanation of the terms and conditions of the QJSA, the participant's right to make, and the effect of, an election to waive the QJSA form of benefit, the rights of the participant's spouse, and the right to revoke (and the effect of the revocation of) an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406 (88 Stat. 829) as subsequently amended, provides parallel rules to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code. In particular, section 205(a)(3) of ERISA provides a parallel rule to section 417(a)(3) of the Code. Treasury regulations issued under section 417(a)(3) of the Code apply as well for purposes of section 205(a)(3) of ERISA.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (T.D. 8219, 1988-2 C.B. 48 [53 FR 31837]). Section 1.401(a)-20, Q&A-36, provides rules for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Section 1.401(a)-20, Q&A-36, requires that such a written explanation must contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)-20, Q&A-36, provides that the written explanation must comply with the requirements set forth in § 1.401(a)-11(c)(3). Section 1.401(a)-11(c)(3) was is-

sued prior to the enactment of section 417, and provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)-11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

In addition, under section 411 and § 1.411(a)-11(c), so long as a benefit is immediately distributable (within the meaning of § 1.411(a)-11(c)(4)), a participant must be informed of his or her right to defer that distribution. This requirement is independent of the section 417 requirements addressed in these proposed regulations.

Concerns have been expressed that, in certain cases, the information provided to participants under section 417(a)(3) regarding the available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations. Accordingly, these proposed regulations are being issued to propose disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

Explanation of Provisions

The proposed regulations would consolidate the content requirements applicable to explanations of QSAs and QPSAs under section 417(a)(3), and would specify rules for disclosing the relative value of optional forms of benefit as part of the QJSA explanation. Similar to the requirements in the current regulations, the required expla-

nation must contain, with respect to each of the optional forms of benefit presently available to the participant, a description of the optional form of benefit, a description of the eligibility conditions for the optional form of benefit, a description of the financial effect of electing the optional form of benefit, a description of the relative value of the optional form of benefit, and a description of any other material features of the optional form of benefit. Further, as under the current regulations, the QJSA explanation would be permitted to be made either by providing the participant with information specific to the participant, or by providing the participant with generally applicable information and offering the participant the opportunity to request additional information specifically applicable to the participant with respect to any optional forms of benefit available to the participant. The proposed regulations would clarify that a defined contribution plan is not required to provide a description of the relative values of optional forms of benefit compared to the value of the QJSA.

The proposed regulations would provide additional guidance regarding the required description of the relative values of optional forms of benefit compared to the value of the QJSA and the content of the required disclosure of relative values. Under the proposed regulations, the description of the relative value of an optional form of benefit compared to the value of the QJSA must be expressed 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. In order to make this comparison, the benefit under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that both are expressed in the same form. The proposed regulations give several examples of techniques that may be used for this comparison: expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA; stating the amount of an annuity payable at the same time and under the same conditions as the QJSA that is the actuarial equivalent of the optional form of benefit; or stating the actuarial present value of both the QJSA and the optional form of benefit. For purposes of pro-

viding a description of the relative value of an optional form of benefit compared to the value of the QJSA (and also for purposes of comparing the financial effect of the distribution forms available to a participant), a plan would be permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date or an estimate of the spouse's age). If estimates are used, the participant has a right to a more precise calculation upon request.

Since disclosing the relative value of every optional form of benefit regardless of the degree of subsidy may be too burdensome, and may provide participants with information that appears more precise than is warranted based on the inexact nature of the actuarial assumptions used, the proposed regulations would provide some ways to simplify this disclosure of relative values of optional forms of benefit. One way in which this disclosure would be simplified is through a banding rule under which two or more optional forms of benefit that have approximately the same value could be grouped for purposes of disclosing relative value. Under these proposed regulations, two or more optional forms of benefit would be treated as having approximately the same value if those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less 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 could 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. 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 may be described by stating that those optional forms of benefit are of approximately equal

value to the value of the QJSA. Thus, these rules would permit a plan that provides no subsidized forms of benefit to state the comparison of relative values simply by stating that all distribution forms are approximately equal in value to the QJSA.

Another way in which this disclosure may be simplified is through the use of representative values: if, under the banding rule, two or more optional forms of benefit are grouped, a representative relative value for all of the grouped options could be used as the approximate relative value for all of the grouped options, in lieu of using the relative value of one of the optional forms of benefit in the 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 optional forms have relative values of 87.5%, 89%, 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.

The proposed regulations would also permit the disclosure of the financial effect and relative value of optional forms of benefit to be made in the form of generally applicable information rather than information specific to the participant, provided that information specific to the participant regarding the optional form of benefit must be furnished at the participant's request. Thus, under the proposed regulations, in lieu of providing a QJSA explanation that describes each optional form that is presently available to the participant, the generalized QJSA explanation need only reflect the generally available optional forms of benefits, along with a reference to where a participant can obtain the information for any other optional forms of benefits (such as optional forms from prior benefit structures for limited groups of employees) that are presently available to the participant.

With respect to the generally available optional forms of benefits, in lieu of providing a statement of financial effect and relative value comparison that is specific to the participant, the generalized QJSA explanation is permitted to include a chart or other comparable device showing a series of examples of financial effects and rela-

relative value comparisons for hypothetical participants. The examples in the chart should reflect a representative range of ages for the hypothetical participants and use reasonable assumptions for the age of the hypothetical participant's spouse and any other variable that affects the financial effect, or relative value, of the optional form of benefit. The chart 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. A generalized QJSA explanation that includes this chart must also include the amount payable to the participant under the normal form of benefit, either at normal retirement age, or payable immediately. In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect along with a comparison of relative values that is specific to the participant for one or more presently available optional forms of benefit, and a description of how a participant may obtain this additional information. Thus, with respect to those optional forms of benefit for which additional information is requested, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit.

The proposed regulations would provide rules governing the actuarial assumptions to be used in comparing the value of an optional form of benefit to the QJSA. If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)-1(d) (e.g., a single-sum distribution), 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). All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest rates and mortality tables that are reasonable and that are applied uniformly for this purpose with respect to all such other optional forms payable to the par-

ticipant. The uniform interest and mortality assumptions should be used regardless of whether those assumptions are actually used to determine the amount of benefit payments under any particular optional form.

The proposed regulations would also require disclosure of information to help a participant understand the significance of a disclosure of the relative value of an optional form of benefit. Under the proposed regulations, the notice would be required to provide an explanation of the concept of relative value. Specifically, the notice would be required to explain 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 currently available to a common form (such as the QJSA or single-sum distribution), and that this conversion uses interest and life expectancy assumptions.

Under the proposed regulations, a required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan generally would be required to disclose the interest rate that is used to develop a required numerical comparison. However, if all optional forms of benefit are permitted to be treated as having approximately the same value after application of the banding rule described above, then the plan would not be required to disclose the interest rate used to develop a required numerical comparison to the QJSA for optional form of benefit that is not subject to the requirements of section 417(e)(3). In addition, the proposed regulations would require the plan to provide a general statement that all numerical comparisons of relative value 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.

Under the proposed regulations, both the QPSA explanation and the QJSA explanation must be written in a manner calculated to be understood by the average participant. A plan may wish to provide additional information beyond the minimum information that would be required under these proposed regulations, in order to help an employee to evaluate the form of benefit that would be most desirable under the

employee's individual circumstances. For example, the plan may wish to add further explanation of the effects of ill health or other factors influencing expected longevity on the desirability of electing annuity forms of distribution.

The proposed regulations contain rules regarding the method for providing the QJSA explanation and the QPSA explanation. Under the proposed regulations, these explanations must be written explanations. First class mail to the last known address of the party 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.

These proposed regulations do not address the extent to which the QJSA explanation or the QPSA explanation can be provided through electronic media. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106-229, 114 Stat. 464 (2000). The IRS and the Treasury Department anticipate issuing proposed regulations regarding these issues, and invite comments on these issues.

Proposed Effective Date

The regulations are proposed to be applicable to QJSA explanations with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few,

if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at www.irs.gov/reg. All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement.

A public hearing has been scheduled for January 14, 2003, at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 2, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 — INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986.

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Paragraph (c)(3) of § 1.401(a)-11 is revised to read as follows:

§ 1.401(a)-11 Qualified joint and survivor annuities.

* * * * *

(c) * * *

(3) *Information to be provided by plan.* For rules regarding the information required to be provided with respect to the election to waive a QJSA or a QPSA, see § 1.417(a)(3)-1.

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Par. 3. A-36 of § 1.401(a)-20 is revised to read as follows:

§ 1.401(a)-20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

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A-36. For rules regarding the explanation of QPSAs and QJSAs required under section 417(a)(3), see § 1.417(a)(3)-1.

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Par. 4. Section 1.417(a)(3)-1 is added to read as follows:

§ 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.

(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) 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);

(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) *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 those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less 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. In addition, 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 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.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c)(2)(ii)(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 optional forms have relative values of 87.5%, 89%, 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)(ii)(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.

(iii) *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, 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).

(iv) *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 in-

terest 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 interest assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan is required to disclose 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)(ii)(A) of this section, then the requirement of this paragraph (c)(2)(iv)(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).

(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.

(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.

(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) show-

ing 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)(iv) 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 annu-

ity, 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.

(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—(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 timely request from the participant 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 ac-

tual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section.

(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 timely request from the participant for an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election, the plan must furnish such an estimate.

(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 5½%, 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 January 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 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) Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution option under the plan, and any eligibility conditions associated with these options. 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 equiva-

lent in value to a 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) Participant M requests a more precise calculation of the financial effect of choosing a QJSA, taking into the actual age of Participant M's spouse. Based on the fact that M's spouse is age 50, 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 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, 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.

(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.

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)	\$956 per month	n/a
Joint and 100% survivor annuity	\$886 per month	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)	\$945 per month	n/a
Joint and 100% survivor annuity	\$859 per month	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)	\$932 per month	n/a
Joint and 100% survivor annuity	\$828 per month	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 QJSA, the single life annuity, the joint and 100% survivor annuity, and the single-sum options to an equivalent present value 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.

(iv) Participant M requests 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 at January 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.

(f) *Effective date.* This section applies to QJSA explanations provided with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

§ 1.417(e)-1 [Amended]

Par. 5. In § 1.417(e)-1, paragraph (b)(2) is amended by removing the language “§ 1.401(a)-20 Q&A-36” and adding “§ 1.417(a)(3)-1” in its place.

Robert E. Wenzel,
Deputy Commissioner of
Internal Revenue.

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