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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9256

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Revised Regulations Concerning Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 417(a)(3) of the Internal Revenue Code concerning content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: Effective date: These regulations are effective March 24, 2006.

Applicability dates: The changes to §1.401(a)-20, A-36, and §1.417(a)(3)-1 apply as if they had been included in TD 9099 (68 FR 70141). The change to §1.401(a)-20, Q&A-16, applies as if it had been included in TD 8219 (53 FR 31837).

FOR FURTHER INFORMATION CONTACT: Bruce Perlin or Linda Marshall at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-0928.

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

Section 417(a) provides rules under which a participant (with spousal consent) may elect to receive benefits in a form other than a qualified joint and survivor annuity (QJSA), including rules relating to required distributions. Specifically, section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date, a written explanation that includes the following information: (1) the terms and conditions of the QJSA; (2) the participant's right to make an election to waive the QJSA form of benefit; (3) the effect of such an election; (4) the rights of the participant's spouse; and (5) the right to revoke 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 rules that are parallel to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code (Code). In particular, section 205(c)(3) of ERISA provides a rule parallel to the rule of section 417(a)(3) of the Code.

Section 1.401(a)-20, which provides rules governing the requirements for a waiver of the QJSA, was published in the **Federal Register** on August 19, 1988 (TD 8219) (53 FR 31837), effective August 22, 1988. Section 1.401(a)-20, Q&A-36, as published in 1988, set forth requirements for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Under those requirements, 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, as published in 1988, provided 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), which was issued prior to the enactment of section 417, 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.

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 of a form of benefit 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 section 417(e)(3) and §1.417(e)-1(d) for actuarial assumptions required for use in certain present value calculations.

Final regulations under section 417(a)(3) regarding disclosure of the relative value and financial effect of optional forms of benefit as part of QJSA explanations provided to participants receiving qualified retirement plan distributions were published in the **Federal Register** on December 17, 2003. See §1.417(a)(3)-1 (68 FR 70141). The 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after October 1, 2004.

The 2003 regulations were issued in response to concerns that, in certain cases, the information provided to participants under section 417(a)(3) regarding available distribution forms pursuant to §1.401(a)-20, Q&A-36, did not adequately enable them to compare those distribution forms without professional advice. In particular, participants who were eligible for early retirement benefits in the form of both subsidized annuity

distributions and unsubsidized single-sum distributions may have been receiving explanations that do not adequately disclose 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 the annuity payments would not adequately enable a participant to make an informed comparison of the relative values of those distribution forms. The 2003 regulations addressed this problem, as well as the problem of disclosure in other cases where there are significant differences in value among optional forms, and also clarified the rules regarding the disclosure of the financial effect of benefit payments.

A number of commentators requested that the effective date of the 2003 regulations be postponed. Among the reasons cited was the need in some plans for sponsors to complete an extensive review and analysis of optional forms of benefit in order to prepare proper comparisons of the relative values of those optional forms to the QJSA. After consideration of these comments, the IRS issued Announcement 2004-58 (2004-29 I.R.B. 66), which postponed the effective date of the 2003 regulations under §1.417(a)(3)-1 for certain QJSA explanations.

Consistent with Announcement 2004-58, proposed regulations were published in the **Federal Register** on January 28, 2005, to provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. On August 24, 2005, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the

proposed regulations are adopted, as amended by this Treasury decision. The revisions are discussed below.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over ERISA provisions that are parallel to the Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of the parallel rules in section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Explanation of Provisions

As provided in the 2005 proposed regulations, these final regulations provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. However, these regulations retain the effective date for §1.417(a)(3)-1 under the 2003 regulations for explanations with respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. Thus, for example, a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with §1.417(a)(3)-1 to the extent that the plan provides for payment to that participant in the form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA. If the October 1, 2004, effective date applies to an optional form of benefit, the plan must disclose the relative value of the optional form of benefit compared to the value of the QJSA for the participant even if the plan provides a disclosure of relative values that

is not tailored to the participant's marital status. Accordingly, if a plan provides a relative value disclosure based on the single life annuity (the QJSA for a single participant) to a married participant, the plan must also include a comparison of the value of the QJSA to the value of the single life annuity.

To illustrate the application of the modified effective date of §1.417(a)(3)-1, the 2005 proposed regulations contained a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3), and included a social security level income option in that list.¹ A social security level income option is the payment of a participant's benefit in the form of an annuity with larger payments in earlier years before an assumed social security commencement age to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. Several commentators expressed disagreement with the inclusion of social security level income options in the list of benefits that are subject to the minimum present value requirements of section 417(e)(3), based on their view that a social security level income option is not subject to those requirements. Commentators requested that this interpretation be withdrawn or, alternatively, that it be the subject of a separate rulemaking process to allow adequate

¹Section 1.417(e)-1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits. A social security supplement is defined in §1.411(a)-7(c)(4) as a benefit for plan participants that commences before the age and terminates at the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. Under section 411(a)(9) and §1.411(a)-7(c)(4), a plan's early retirement benefit (and, therefore, a plan's normal retirement benefit) is determined without regard to a social security supplement.

notice and comment. In addition, commentators objected to the placement of these examples in the effective date provisions of the relative value regulations rather than in the regulations regarding the minimum present value requirements of section 417(e)(3).

These final regulations do not include a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3) in the provisions regarding the effective date of these regulations. The omission of this list reflects agreement with commentators that this is not the appropriate placement for guidance regarding the minimum present value requirements of section 417(e)(3). Section 1.417(e)-1(d)(6) identifies the types of payments that are not subject to the minimum present value requirements of section 417(e)(3). Under §1.417(e)-1(d)(6)(ii)(B), the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that decreases during the life of the participant merely because of the cessation or reduction of social security supplements. However, no such exemption applies to social security level income options.

As under the 2005 proposed regulations, these final regulations include a special rule that enables a plan to use the delayed effective date rule even if there are minor differences between the value of an optional form and the value of the QJSA for a married participant that are caused by the calculation of the amount of the optional form of benefit based on the life annuity rather than on the QJSA. Under this special rule, solely for purposes of the effective date provisions, the actuarial present value of an optional form is treated as not being less than the actuarial present value of the QJSA if

the following two conditions are met. First, 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. Second, 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.

Like the 2005 proposed regulations, these final regulations modify the 2003 regulations in two other respects. First, for purposes of disclosing the normal form of benefit as part of a disclosure made in the form of generally applicable information, reasonable estimates of the type permitted to be used to disclose participant-specific information may be used to determine the normal form of benefit, but only if the plan follows the requirements applicable to reasonable estimates used in disclosing participant-specific information (such as offering a more precise calculation upon request and revising previously offered information consistent with the more precise information). Second, a QJSA explanation does not fail to satisfy the requirements for QJSA explanations made in the form of disclosures of generally applicable information merely because the QJSA explanation contains an item of participant-specific information in place of the corresponding generally applicable information.

In response to the 2005 proposed regulations, commentators requested a number of other modifications to the 2003 regulations that were not addressed in the 2005 proposed regulations. These regulations adopt a number of these suggestions.

To address questions raised by commentators, these regulations clarify which optional forms of benefit that are available with retroactive annuity starting dates are required to be covered in a QJSA explanation. Under these regulations, a QJSA explanation must provide the required 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). In addition, these regulations clarify that the disclosure of the financial effect of an optional form of benefit (including a benefit available with a retroactive annuity starting date) must describe 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.

Some commentators expressed concerns over the fact that the regulations permit any optional form of benefit that is at least 95% as valuable as the QJSA for a married participant to be described as approximately equal in value to the QJSA, even if that optional form of benefit is substantially more valuable than the QJSA. These commentators expressed concerns regarding compliance with the standards of professional conduct for actuaries and recommended that the regulations prohibit employers from providing information to participants that is misleading. Commentators also objected to the difference between this rule and the rule for disclosures of relative values in comparison to the single life annuity, under which optional forms of benefit can

be disclosed as approximately equal in value to the single life annuity only if all optional forms are within a range of 95% to 102.5% of the value of the single life annuity.

To address these concerns, these regulations provide that 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 these optional forms of benefit are approximately equal in value to the QJSA, or that all of these forms of benefit and the QJSA are approximately equal in value. Thus, optional forms of benefit that have greater differences in present value may not be described as having approximately the same value. Moreover, this rule applies regardless of whether the comparison is made to the QJSA for married participants or the QJSA for unmarried participants. To give employers sufficient time to perform the additional calculations that may be required to implement this rule, a special effective date applies so that this change to the regulations need not be applied for disclosures made before 2007.

Some commentators requested clarification regarding the reasonable actuarial assumptions that can be used to compare the value of an optional form of benefit to the value of the QJSA if that optional form of benefit is not subject to the minimum present value requirements of section 417(e)(3). In response, these regulations clarify that, 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.

Commentators requested that simplified disclosures of financial effect and relative value be permitted under certain circumstances to enable employers to make that information more useful for participants in certain cases in which the plan would otherwise be required to provide a confusing array of information to a participant. To address these concerns, these regulations permit simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit, and also permit simplified presentations of relative value and financial effect for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

If a plan offers a significant number of substantially similar optional forms of benefit 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 explaining the relative value and financial effect of a representative range of examples of those optional forms of benefit. For purposes of this rule, 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 all whole number percentages between 50% and 100%, those joint and survivor annuity options

are substantially similar. 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.

A range of examples with respect to substantially similar optional forms of benefit as permitted under this rule is representative only if it includes examples illustrating the relative value and financial effect 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 relative value and financial effect of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate a pattern of variation in relative value with respect to a varying feature, examples that are sufficient to illustrate the pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in all whole number percentages between 50% and 100%, and if all such optional forms of benefit would be permitted to be described as approximately equal in value, the plan could satisfy the requirement to disclose the relative value and financial effect of a representative range of examples of those optional forms of benefit by disclosing the relative value and financial effect with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and joint and 100% survivor annuity.

If the plan permits a 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).

As under the 2005 proposed regulations, these regulations include a change to §1.401(a)-20, Q&A-16, to clarify the interaction of the rule prohibiting a plan from providing an option to a married individual that is worth more than the QJSA with the requirement that certain optional forms of benefit be calculated using specified actuarial assumptions. Under that clarification, a plan would not fail to satisfy the requirements of §1.401(a)-20, Q&A-16, merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using actuarial assumptions set forth in section 417(e)(3) (i.e., the applicable interest rate and, for periods that are required, the applicable mortality table).

Dates of Applicability

As discussed above under the heading Explanation of Provisions, these regulations retain the effective date for §1.417(a)(3)-1 under the 2003 regulations (i.e., QJSA explanations with respect to annuity starting dates on or after October 1, 2004) for explanations with respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. See §1.417(a)(3)-1(f)(2). Thus, for example, a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with §1.417(a)(3)-1 to the extent that the plan provides for payment to that participant in the

form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA.

As under the 2005 proposed regulations, these final regulations defer the effective date of the 2003 regulations with respect to all other QJSA explanations. Under these final regulations, the 2003 regulations (as amended by these regulations) generally apply to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006. However, the change to §1.417(a)(3)-1(c)(2)(iii)(C) (relating to disclosures of optional forms of benefit that are approximately equal in value to the QJSA) is not required to be applied to QJSA explanations provided before January 1, 2007.

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 (except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of §1.417(a)(3)-1(f)(2)). For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with the 2003 regulations.

These regulations do not change the effective date of the 2003 regulations with respect to QPSA explanations. Thus, the 2003 regulations continue to apply to any QPSA explanation provided on or after July 1, 2004.

The change to §1.401(a)-20, Q&A-16 (clarifying that a plan does not fail to satisfy the requirements of Q&A-16 as a result of complying with the minimum present value

requirements of section 417(e)(3)), applies as if it had been included in the 1988 regulations (TD 8219, 53 FR 31837).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It 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, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Bruce Perlin and 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.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

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

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

Par. 2. Section 1.401(a)-20 is amended by:

1. Adding a sentence to the end of Q&A-16.
2. Adding a sentence to the end of Q&A-36.

The additions read as follows:

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

* * * * *

A-16 * * * A plan does not fail to satisfy the requirements of this Q&A-16 merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using the applicable interest rate (and, for periods when required, the applicable mortality table) under section 417(e)(3).

* * * * *

A-36 * * * However, the rules of §1.401(a)-20, Q&A-36, as it appeared in 26 CFR Part 1 revised April 1, 2003, apply to the explanation of a QJSA under section 417(a)(3) for an annuity starting date prior to February 1, 2006.

* * * * *

Par. 3. Section 1.417(a)(3)-1 is amended by:

1. Revising the parenthetical in paragraph (c)(1).
2. Revising the parenthetical in paragraph (c)(1)(iii).
3. Removing the language "paragraph (c)(3)(iii) of" from paragraph (c)(2)(ii)(A).
4. Revising paragraph (c)(2)(iii)(C).
6. Adding two sentences to the end of paragraph (c)(2)(iv)(B).
7. Adding paragraph (c)(5).
8. Adding a sentence to the end of paragraph (d)(2)(ii).
9. Adding paragraph (d)(5).
10. Revising paragraph (ii) of Example (4) in paragraph (e) by removing the language "paragraph (c)(2)(ii) of this section" and adding "paragraph (c)(2)(iii) of this section" in its place.
11. Revising paragraph (f).

The additions and revisions read as follows:

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

* * * * *

(c) Participant-specific information required to be provided--(1) In general. * * *

(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) * * *

* * * * *

(iii) * * * (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) * * *

(2) * * *

(iii) * * *

(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) * * *

(B) * * * 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.

* * * * *

(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, 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) * * *

(2) * * * * *

(ii) Actual benefit must be disclosed. * * * 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.

* * * * *

(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.

* * * * *

(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, 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.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 15, 2006

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.