Employee Benefit Plans

Explanation No. 3 Joint and Survivor Determination of Qualification

The purpose of Worksheet Number 3 (Form 5625) and this explanation is to identify major problems that come up over joint and survivor annuity requirements under Internal Revenue Code sections 401(a)(11) and 417. However, there may be issues not mentioned in the worksheet that could affect the plan's qualification.

The joint and survivor annuity requirements of sections 401(a)(11) and 417 apply to plans to which section 411 applies, except those mentioned in section 411(e) (such as governmental plans).

Generally, a "Yes" answer to a question on the worksheet indicates a favorable conclusion while a "No" answer signals a problem concerning the plan qualification. This rule may be altered by specific instructions for a given question. Please explain any "No" answer in the space provided on the worksheet.

The sections cited at the end of each paragraph of explanation are to the Internal Revenue Code and the Income Tax Regulations.

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Publication 6391 (2-2006)
Catalog Number 48171W

The technical principles in this publication may be changed by future regulations or guidelines.

I. APPLICABILITY

The survivor annuity requirements of sections 401(a)(11) and 417 apply to all defined benefit plans and all other plans subject to the funding standards of section 412 (i.e., money purchase pension plans, including target benefit plans). There is a special exception, described below, for certain money purchase plans that are part of ESOPs.

The requirements do not apply to defined contribution plans (other than money purchase and target benefit plans) that meet all of the following requirements:

a) the plan provides that the participant's nonforfeitable accrued benefit is payable in full, on the participant's death, to the surviving spouse (unless the participant elects with spousal consent that the benefit be paid instead to a designated beneficiary);

b) the participant does not elect to receive benefits in the form of a life annuity; and

c) the plan is not a transferee or offset plan with respect to the participant.

Requirements b) and c) are applied on a participant by participant basis. Therefore, a profit-sharing or stock bonus plan, for example, could be subject to the survivor annuity requirements of sections 401(a)(11) and 417 with respect to some participants but not others. See I.b., below.

The law provides a special rule in the case of a money purchase ESOP. The portion of a participant's accrued benefit under such a plan that is subject to section 409(h) ("put options") is treated as though it were provided under a defined contribution plan not subject to section 412. Thus, if the requirements in a), b), and c), above, are met, the 409(h) part of the participant's benefit in the money purchase ESOP is exempt from the survivor annuity requirements.

401(a)(11)
1.401(a)-20 Q&A 3

Line a. To be exempt from the survivor annuity requirements of sections 401(a)(11) and 417, a defined contribution plan not subject to section 412 must provide that the participant's nonforfeitable accrued benefit is payable in full, on the participant's death, to the surviving spouse or (if there is no surviving spouse, or if the surviving spouse consents in the manner described below) to a designated beneficiary. Thus, there can be no forfeiture to the plan on account of death.

An exception allows a plan to provide that the nonforfeitable account balance is not required to be paid to the surviving spouse if the participant and spouse have not been married throughout the one-year period ending on the earlier of the participant's annuity starting date or date of death.

A participant may waive this spousal benefit in favor of a designated beneficiary at any time provided the spouse properly consents to the waiver. Both the participant's waiver and the spouse's consent must state the specific nonspouse beneficiary (including any class of beneficiaries or any contingent beneficiaries). The plan must provide that the designated beneficiary cannot be changed without subsequent consent by the spouse. Other rules relating to spousal consent are described in II.g., below. These also apply to the waiver of the spousal benefit in defined contribution plans exempted from the survivor annuity requirements. Spousal consent is not required in these plans for a distribution to the participant or for the use of the accrued benefit as security for a plan loan to the participant.

A plan does not meet the requirement to pay the nonforfeitable accrued benefit in full to the surviving spouse unless the benefit is available to the spouse within a reasonable time after the participant's death. For this purpose, 90 days is reasonable and the reasonableness of any longer period is based on facts and circumstances. Time periods longer than 90 days are unreasonable if they are less favorable to the surviving spouse than any time period that applies to other distributions under the plan.

A plan will also fail this requirement if it does not adjust the spousal benefit for gains and losses occurring after the participant's death in accordance with the plan's rules for adjusting account balances for other distributions.

A plan may provide that it will offset any loan outstanding at the participant's death which is secured by the account balance against the spousal benefit.

401(a)(11)(B) and (D)
1.401(a)-20 Q&A 3, 13, 26, and 31 - 33

Line b.i. If the plan offers a life annuity benefit option and the participant selects this option, the survivor annuity requirements will thereafter apply with respect to that participant's benefits under the plan. Thus, in this situation, the survivor annuity requirements may apply under the plan on a participant by participant basis. Also, if there is a separate accounting of the account balance subject to the participant's life annuity election, the plan may provide that the survivor annuity requirements apply only to that part of the account balance.

If the plan contains a life annuity benefit option, the terms of the plan must meet the requirements described in the remainder of the worksheet for those participants who elect the life annuity.

401(a)(11)(B)
1.401(a)-20 Q&A 4

Line b.ii. A plan that would otherwise be exempt from the survivor annuity requirements will nevertheless have to meet these requirements if the plan is a transferee plan with respect to any participant. A plan is a transferee plan if it is a direct or indirect transferee of a participant's benefits that were held on or after January 1, 1985 by a defined benefit plan or by a defined contribution plan that is subject to the survivor annuity requirements with respect to that participant. Transfers made before 1985 and rollovers made at any time will not subject the plan to the survivor annuity requirements. If the plan is a transferee plan with respect to a participant, the survivor annuity requirements do not apply to other participants solely because of the transfer. Also, if there is an acceptable separate accounting between transferred benefits and other benefits, the survivor annuity requirements need only apply to the transferred benefits.

If this plan is a transferee plan or if it permits transfers from plans subject to the survivor annuity requirements, the

terms of the plan must meet the requirements described in the remainder of the worksheet for those participants with respect to whom the plan is or may become a transferee plan.
401(a)(11)(B)
1.401(a)-20 Q&A 5

Line b.iii. If benefits under the plan offset benefits under a defined benefit plan, the plan must meet the requirements described in the remainder of the worksheet with respect to those participants whose benefits are offset. A plan will not become subject to the survivor annuity requirements on account of the offset, however, unless the plans are maintained by the same employer or by affiliated employers. For these purposes, an affiliated employer is any employer that is a member of a group described in section 414(b), (c), (m), or (o).
1.401(a)-20 Q&A 5

II. JOINT AND SURVIVOR BENEFITS

The rules of sections 401(a)(11) and 417 apply to participants who have one hour of service or paid leave under the plan after August 22, 1984. Sections 302 and 303 of the Retirement Equity Act of 1984 contain transition rules that apply to certain other participants, but a plan is not required to be amended to set forth these rules.

The requirements that are described in the remainder of the worksheet and this explanation apply not only to a plan but also to any annuity contracts purchased by a plan and distributed to participants or their spouses. For example, deferred annuity contracts that are distributed to participants upon termination of a plan would have to provide for payment in the form of a qualified joint and survivor annuity and for preretirement survivor annuity coverage in the event of death prior to the time payments under the contract are to commence. The other rights and benefits described below would also apply to these contracts.
1.401(a)-20 Q&A 2, 39 and 42

Line a. A plan that is subject to the survivor annuity requirements must provide that a vested participant who is alive on the annuity starting date must receive his or her benefit in the form of a qualified joint and survivor annuity (QJSA), unless there has been a proper election by the participant, with spousal consent, to waive the QJSA and certain notice requirements have been met.

A vested participant is one who is vested in benefits attributable to either employer or employee contributions. Thus, employees who have made mandatory or voluntary contributions to a plan that is subject to the survivor annuity requirements must (absent a proper waiver) automatically receive their benefits in the form of a QJSA if they are alive on the annuity starting date, even if they are not vested in any employer derived benefits.

A QJSA is an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity payable during the joint lives of the participant and spouse. In the case of an unmarried participant, a QJSA is an annuity for the life of the participant.

In a defined contribution plan, the amount of the QJSA benefit is that which can be purchased with the participant's nonforfeitable account balance, including both employer and employee contributions (although accumulated deductible employee contributions - DECs - may generally be excluded, as explained below). In a defined benefit plan, the entire vested accrued benefit (including any portion attributable to mandatory contributions) is subject to the QJSA requirements and the QJSA for a married participant must be at least as valuable as any other optional form of benefit that is payable under the plan at the same time. (See II.e., below.) Where an employee has made voluntary contributions to a defined benefit plan, the plan must maintain a separate account for these contributions and provide for their distribution as an automatic QJSA.

DECs that are made to either a defined contribution or defined benefit plan are treated as though they were made to a defined contribution plan not subject to section 412. Thus, if the plan provides that the account balance attributable to DECs is payable in full to the surviving spouse on the participant's death and the participant does not (or cannot) elect to have them paid as a life annuity, the DECs will not be subject to the survivor annuity requirements.

A plan is required to pay a qualified preretirement survivor annuity (QPSA) to the surviving spouse of a vested participant who dies before the annuity staring date, unless the participant has waived the QPSA with spousal consent (see III, below). Thus, a correct determination of the annuity starting date is necessary to establish whether a benefit is to be paid as a QJSA or as a QPSA and will generally affect the amount of the annuity payments. The annuity starting date is also used to determine when a participant may elect with spousal consent to waive the QJSA and whether benefits can be forfeited on a participant's death.

The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The actual date of a participant's retirement or other separation from service is not relevant. A plan that provides that the QJSA rules apply to retired participants and that the QPSA rules apply prior to retirement does not satisfy the requirements of sections 401(a)(11) and 417.

Example

A defined benefit plan provides that a participant will begin receiving monthly benefit payments starting with the month in which the participant attains normal retirement age under the plan (age 65), regardless of whether the participant has actually retired. Participant A dies on July 2, 10 days before his 65th birthday and his scheduled retirement date, and before the first benefit payment is actually made. Participant A and his spouse have not waived the QJSA. Because A was alive on the annuity starting date (July 1), the benefit that the plan must pay is a QJSA.

Other rules relating to the annuity staring date are described in II.b. and g., and III.a., below.

401(a)(11)(A)
417(b) and (f)
1.401(a)-20 Q&A 8, 10, 11, 14, 15 and 25

Line b. There is a special rule for determining the annuity starting date in the case of disability benefits. If a disability benefit is an auxiliary benefit, the commencement of the disability benefit payments will not be an annuity starting date for survivor annuity purposes. Therefore, the benefit can be paid in a form other than a QJSA without the need for participant and spousal consent. If the disability benefit is not an auxiliary benefit, the first day of the first period for which the benefit becomes payable is the annuity starting date and the benefit payments must be in the form of a QJSA unless waived by the participant and spouse.

A disability benefit is an auxiliary benefit if the participant will receive at early or normal retirement age a benefit that meets the accrual and vesting requirements without taking into account the disability payments. Thus, if a disability benefit reduces the benefit that would otherwise have been paid at early or normal retirement age, the disability benefit is not an auxiliary benefit. In addition, a disability benefit would not be considered an auxiliary benefit if payment of the disability benefit reduced the array of optional forms of benefit available to the participant at early or normal retirement age.

If the plan provides a disability benefit, it must be determined whether the disability benefit is an auxiliary benefit. For example, if a defined benefit plan provides that a disabled participant will be entitled to an early distribution of his or her vested accrued benefit, the disability benefit will not be an auxiliary benefit because payments will reduce the benefit that would otherwise be paid at early or normal retirement age. Similarly, if a defined contribution plan permits distribution of the account when a participant becomes disabled, the disability benefit is not an auxiliary benefit. If the plan provides for disability benefits that are not auxiliary benefits, it must provide that the QJSA requirements will apply to the payment of these benefits.
417(f)(2)(B)
1.401(a)-20 Q&A 10

Line c. A QJSA is an immediate annuity. Therefore, a plan cannot make a distribution at any time in a form other than a QJSA unless a QJSA that commences immediately is available at the same time and the participant has waived it with spousal consent. For example, if a plan provides that a participant who retires early will receive either an automatic joint and survivor annuity under which payments will commence at NRA or, if elected by the participant and spouse, an immediate single sum payment, the joint and survivor annuity will not be a QJSA and the plan will not satisfy the survivor annuity requirements. On the other hand, a terminating plan, for example, could provide for distribution of deferred annuity contracts under which neither the QJSA nor any other optional form of benefit would be available until NRA.
1.417(e)-1(b)(1)

Line d. The QJSA for a married participant must be at least as valuable as any other optional form of benefit payable under the plan at the same time.

Example

A defined benefit plan contains an early retirement feature which provides that eligible employees who do not elect another form will receive an immediate joint and survivor annuity that is actuarially equivalent to a single life annuity payable at NRA. The other benefit forms available at early retirement are an immediate single life annuity that is fully subsidized with respect to the single life annuity payable at NRA (that is, there is no reduction in benefit payments on account of early payment) and a single sum actuarially equivalent to the single life annuity payable at NRA. Because the joint and survivor annuity is not at least as valuable as the subsidized single life annuity, it is not a QJSA and the plan does not satisfy the survivor annuity requirements.

Note that this rule applies only to the QJSA for a married participant. A single life annuity for an unmarried participant will not fail to be a QJSA merely because it is less valuable than other spousal forms of a benefit payable under the plan.
1.401(a)-20 Q&A 16

Line e. A plan can always provide for more than one annuity which meets the requirements of a QJSA. For example, a plan could offer several joint and survivor annuities that are actuarially equivalent, such as joint and 50%, joint and 66 2/3%, and joint and 100%. A participant is always free to choose among QJSAs available under the plan at any time and without the need for spousal consent, provided the annuities are actuarially equivalent. However, where a plan does offer two or more actuarially equivalent joint and survivor annuities that meet the requirements of a QJSA, it must designate which one will be the automatic form of benefit.
1.401(a)-20 Q&A 16

Line f. The plan must allow a participant to receive a QJSA distribution at earliest retirement age under the plan.

"Earliest retirement age under the plan" not only determines when a participant must be allowed to obtain a QJSA distribution, but also affects when payments under a QPSA must commence and the calculation of the QPSA. (See III.b. and c., below.)

In a plan that allows distributions on separation from service, earliest retirement age is the earliest age at which a participant could separate from service and receive a distribution. In a plan that allows in-service distributions, earliest retirement age is the earliest age at which such distributions could be made. For any other plan, earliest retirement age is the early retirement age under the plan, if any, or normal retirement age under the plan, if there is no early retirement.

If a participant dies or separates from service prior to the earliest retirement age, only the actual years of service

completed by the participant at the time of separation or death are taken into account in determining that participant's earliest retirement age. For example, in a plan that does not allow distributions before the earlier of age 55 and completion of 10 years of service or age 65, earliest retirement age for a participant who separated from service at age 50 with 10 or more years of service would be when the participant attains age 55. At that time, the participant would have to be able to take a QJSA distribution under the plan. If the same participant had fewer than 10 years of service, the QJSA would have to be available no later than at age 65.

417(a)(7)
417(f)(3)
1.401(a)-20 Q&A 17
1.417(e)-1T

Line g. In addition to providing an automatic QJSA, a plan that is subject to the survivor annuity rules must generally meet certain notice, election, and consent requirements regarding the QJSA.

The plan must contain election and consent provisions that meet the following requirements. The participant must be given the opportunity to waive the QJSA during the 90-day period before the annuity starting date (if another optional form of benefit is available under the plan.) The participant's written waiver will not be acceptable unless the spouse consents to it in writing during the same 90-day period. Both the participant's waiver of the QJSA and the spouse's consent must state the specific nonspouse beneficiary (including any class of beneficiaries or any contingent beneficiaries) and the particular optional form of benefit. Neither the beneficiary nor the optional form may be changed without subsequent spousal consent unless in the original consent, the spouse acknowledged the right to limit consent to a specific beneficiary and optional form and voluntarily relinquished those rights. However, the plan may permit the surviving spouse, or other beneficiary, to change the form of benefit after the participant's death. The spouse's consent must be witnessed by a plan representative or notary public.

A plan may provide that a legal guardian of the spouse may give consent if the spouse is incompetent. A plan may also provide that consent is not required if it is established to the satisfaction of a plan representative that there is no spouse or the spouse cannot be located, or if a court order establishes that the participant is legally abandoned or separated. However, in the latter situation, a qualified domestic relations order (QDRO), as defined in section 414(p), may require QJSA coverage of a separated spouse and thus consent. (Note that a plan is not required to contain any provisions relating to a QDRO.)

A plan may not accept a pre-nuptial agreement as consent. Also, if a participant divorces and remarries, the former spouse's consent is not binding on the new spouse (unless, and to the extent, provided otherwise by a QDRO).

A plan must also provide participants with notice explaining the terms and conditions of a QJSA, their rights to waive the QJSA and to revoke a waiver, and their spouses' rights regarding consent. In general this written explanation must be provided no more than 90 nor less than 30 days prior to the annuity starting date and it must explain the terms and conditions of the QJSA; the participant's right to elect, in writing, not to receive the QJSA (with the consent of the participant's spouse, also in writing, if applicable), and the effect of such an election; the participant's right to revoke an election not to receive the QJSA, and the effect of such a revocation; and the eligibility conditions, material features, and relative values of available optional forms of benefit. The participant has a 30 day period following the receipt of the written explanation to decide whether to receive a distribution in a form other than a QJSA. A plan may contain language that allows the participant to elect (with spousal consent) to waive the 30 day period and receive a distribution in a form other than a QJSA provided the distribution begins more than 7 days after the participant received the written explanation. Any election by the participant to waive the 30 day period is not valid unless the plan has given the participant information on his right to wait 30 days to consider whether to waive the QJSA, the right to revoke the waiver until the later of 7 days following receipt of the written explanation or the annuity starting date, and the plan provides that the annuity starting date is a date after the participant has received the written explanation. For plan years beginning after December 31, 1996, the plan may contain language that the annuity starting date could be a date prior to the time the participant received the written explanation if the participant's right to waive the QJSA does not end less than 30 days after such explanation is provided, subject to the participant's waiver of the 30 day period, as discussed above.

Example

The plan provides the participant with an explanation of the QJSA and other optional forms of distribution on March 4, 1998. On March 7, 1998, the participant elects (with the consent of the spouse) to waive the QJSA and receive an immediate distribution of a single life annuity. The plan can use an annuity starting date of March 1, 1998, providing the first payment is made to the participant no earlier than March 12, 1998. The notice must also be given to currently employed nonvested employees.

Generally, the recommencement of benefit payments to a participant whose benefits were suspended after separation will not create a new annuity starting date, unless the plan provides otherwise. Thus, the plan can recommence payments in the form in which benefits were being distributed prior to suspension without any new notice or consent. The commencement of benefits to an employee whose benefits were suspended without a separation and who never received payments is treated as the annuity starting date, unless the plan provides otherwise.

An annuity starting date after NRA will also apply to additional accruals after the annuity starting date, unless the plan provides otherwise. Thus, these additional accruals can be paid in the form in which the prior accruals are being distributed without any new notice or consent. An annuity starting date before NRA will not apply to additional accruals after that annuity starting date.

Example

A participant receives an in-service distribution of voluntary contributions in a single sum payment, after executing a proper waiver of the QJSA with spousal consent. When the balance of the participant's vested benefit under the plan is distributed, it must be paid as a QJSA unless there is a new election and a new consent to waive the QJSA within the 90-day period before the new annuity starting date.

The plan does not have to meet these notice, election and consent requirements if it fully subsidizes the QJSA and the participant is not allowed to waive the QJSA or to select a non-spouse beneficiary. However, if the participant can waive the QJSA or change the beneficiary, then all of these requirements will apply. For this purpose, a QJSA is never fully subsidized if the other available optional forms of benefit under the plan include a lump sum or a form that guarantees payment of an amount of benefits that could in some circumstances exceed the amounts that would be paid under the QJSA.

417(a)
1.401(a)-20 Q&A 10, 27 - 29, 31, 34 and 36 - 38
1.401(a)-13(g)
1.417(e)-1(b)(3)

Line h. The plan must provide that a participant will be allowed to change an election previously made at any time during the 90-day period before the annuity starting date. If the change in election is not a revocation of the waiver of the QJSA, the spouse must consent to the change (unless a general consent has been given). A plan may preclude a spouse from revoking consent to a specific waiver, or it may permit revocation of spousal consent.

417(a)
1.401(a)-20 Q&A 30

Line i. A plan does not have to treat a participant as married unless the participant and spouse have been married throughout the one-year period ending on the earlier of the annuity starting date or the date of the participant's death. Nevertheless, a participant and spouse who remain married for one year must be treated as married for a year on the annuity starting date even if this is not the case. Therefore, the plan must provide an automatic QJSA to any participant who is married on the annuity starting date. If the spouses do not remain married for one year (because of death or divorce), the plan may revoke the spouse's benefit rights and it need not recalculate and correct amounts already paid to the participant.

The spouse to whom a participant is married on the annuity starting date is the one who is entitled to QJSA coverage in the event of the participant's death (unless otherwise provided in a QDRO), even if they are not married on the date of death. Also, a plan cannot discontinue survivor payments under a QJSA because of remarriage of the surviving spouse. A QDRO can require that a divorced spouse be treated as a current spouse for QJSA purposes.

417(d)
1.401(a)-20 Q&A 25
1.401(a)-13(g)

Line j. Retroactive annuity starting dates apply to defined benefit plans only. A retroactive annuity starting date is an annuity starting date that occurs on or before the date the written explanation required under section 417(a)(3) is provided to the participant. Retroactive annuity starting dates may be used only if the plan provides for it and the participant affirmatively elects to use the retroactive annuity starting date. For a participant who affirmatively elects the retroactive annuity starting date, the plan is required to provide that the participant is in the same position he or she would have been had the participant's benefit payments actually commenced on the retroactive annuity starting date. That is, future periodic payments must be the same as the periodic payments the participants would have been paid had the benefit payments actually commenced on the annuity starting date. A participant cannot elect a retroactive annuity starting date that precedes the date the participant could have started to receive benefits under the plan terms in effect as of the retroactive annuity starting date.

Plan benefits must be determined as of the retroactive annuity starting date. The plan benefits must satisfy section 417(e)(3), if applicable and section 415 with the applicable interest rate and applicable mortality table determined as of the retroactive annuity starting date.

Annuity payments that otherwise satisfy the requirements for a qualified joint and survivor annuity under section 417(b) will not fail to be treated as a qualified joint and survivor annuity for purposes of section 415(b)(2) because the participant elects the retroactive annuity starting date and a make-up payment is required. A participant must receive a make-up payment to reflect a missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment.

A distribution may have a retroactive annuity starting date if the following requirements found in section 1.417(e)-1(b)(3)(v) are satisfied. However, the plan may require additional conditions.

(1) The participant's spouse as of the time distribution actually commence must consent to the retroactive annuity starting date in a manner which satisfies the requirements found in section 417(a)(2). However, spousal consent is only necessary where the survivor annuity is less than fifty percent of the amount of the annuity payable during the life of the participant under a currently commencing qualified joint and survivor annuity. Also, the notice, consent, and election rules found in sections 417(a)(1), (2), and (3) apply.

(2) The plan must demonstrate that the distributions satisfy the limitations under section 415 as of the date distributions commence, unless the distribution commences no more than twelve months after the retroactive annuity starting date.

(3) A retroactive annuity starting date distribution must be no less than the benefit produced by applying the applicable interest rate and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date.

Effective: Plan years beginning on or after January 1, 2004
417(a)
417(a)(7)(A)
417(b)
417(e)(3)
1.417(e)-1(b)(3)

III. PRERETIREMENT SURVIVOR ANNUITIES

Line a. A plan that is subject to the survivor annuity requirements must provide that the surviving spouse of a vested participant who dies before the annuity starting date must receive a qualified pre-retirement survivor annuity (QPSA), unless there has been a proper election to waive the QPSA and certain notice requirements have been met. A QPSA is an immediate annuity for the life of the surviving spouse of a participant. An unmarried participant is deemed to have waived the QPSA. The amount of payments under a QPSA and the time at which the QPSA is calculated are described in III.b. and c., below.

The terms "annuity starting date" and "vested participant" have the same meaning as in II.a., above. Thus, the surviving spouse of an employee who dies before the annuity starting date and is vested only in employee derived benefits must receive a QPSA. Also, in the case of separated and retired participants, QPSA coverage will continue, unless waived with spousal consent, until the annuity starting date.

In certain situations, the annuity starting date may occur with respect to only part of a participant's benefit. In this case, distribution of the part of the benefit for which the annuity starting date has occurred is subject to the QJSA requirements while the remainder of the benefit is subject to the QPSA requirements.

Example

A participant in a money purchase pension plan wants to take an in-service distribution of her voluntary employee contributions prior to separation from service. Any such distribution is subject to the QJSA requirements. However, the rest of the participant's vested account remains subject to the QPSA requirements until the annuity starting date has occurred for these benefits.

A plan that is subject to the survivor annuity requirements may provide for a forfeiture upon the participant's death provided death occurs before the annuity starting date and the required QPSA is not forfeited. (Also see III.b.ii., below, regarding forfeiture on account of a participant's death in a contributory defined contribution plan.) A defined benefit plan may provide for forfeiture of the QPSA if the spouse does not survive until the date prescribed under the plan for commencement of the QPSA or any later commencement date that has been elected by the spouse. A defined contribution plan may not forfeit the account balance even if the spouse dies prior to the time it is used to purchase the QPSA.

401(a)(11)(A)
417(c)
1.401(a)-20 Q&A 8, 9, 13, 19 and 25

Line b.i. The amount of each QPSA payment under a defined benefit plan may not be less than the amount that would be paid under the survivor annuity portion of a QJSA. If the participant dies after attaining the earliest retirement age under the plan, the amount is the amount that would have been paid to the survivor if the participant had retired with an immediate QJSA on the day before death. If the participant's death occurs on or before attaining the earliest retirement age under the plan, the amount is the amount that would have been paid to the survivor if the participant had a) separated from service on the earlier of the date of death or the date of any actual separation, b) survived until the earliest retirement age and retired at that time with an immediate QJSA, and c) died the next day. For this purpose, the term "earliest retirement age under the plan" has the same meaning as in II.f., above.

Example

A vested participant in a defined benefit plan dies at age 45 with 8 years of service. Under the plan, benefits may not be distributed until age 65 or age 55 with 10 years of service. The QPSA has not been waived. Because the participant would not have been eligible to receive benefits at age 55 had she survived until then, the QPSA is calculated on the basis of a QJSA commencing at age 65. If the participant had 10 or more years of service at the time of death, the QPSA would be calculated on the basis of a QJSA commencing at age 55.

The defined benefit QPSA is based only on the benefits in which the participant was vested immediately prior to death. For example, life insurance proceeds need not be distributed as an annuity to the surviving spouse provided the surviving spouse receives the required QPSA.

A voluntary contribution account in a defined benefit plan is subject to the QPSA rules that apply to a defined contribution plan.

417(c)(1)
1.401(a)-20 Q&A 12, 15 and 18

Line b.ii. The amount of the QPSA in a defined contribution plan cannot be less than the amount that can be purchased with 50 percent of the non-forfeitable account balance as of the date of death, including any life insurance proceeds or other amounts in which the participant becomes vested upon death. If the plan provides for a forfeiture on account of the participant's death, no more than a proportional percent of any contributions that may not be forfeited (such as elective and employee contributions) may be used to provide the QPSA. For example, if the QPSA is based on 50 percent of the account balance, only 50 percent of the non-forfeitable contributions may be used for the QPSA.

417(c)(2)
1.401(a)-20 Q&A 12, 20

Line c.i. A defined benefit plan must allow the surviving spouse of a participant who dies before the earliest retirement age to direct the commencement of QPSA payments no later than the month in which the participant would have attained the earliest retirement age. Where the participant dies after the earliest retirement age, the plan must allow the spouse to direct commencement of payments within a reasonable time after the participant's death.

417(c)(1)(B)
1.401(a)-20 Q&A 22

Line c.ii. A defined contribution plan must allow the surviving spouse to direct commencement of QPSA payments within a reasonable time after the participant's death.
417(c)(1)(B)
1.401(a)-20 Q&A 22

Line d. The QPSA is calculated as of the earliest retirement age if the participant dies before that time, or as of the date of death if the participant dies after the earliest retirement age. Therefore, if payments to the surviving spouse commence before or after the earliest retirement age, the plan must provide for reasonable actuarial adjustment to reflect the early or delayed payment.
1.401(a)-20 Q&A 19

Line e. A defined benefit plan may charge a participant for the cost of providing the QPSA. A plan will not violate section 411 merely because it reduces the accrued benefit to reasonably reflect the cost of the QPSA. However, for plan years beginning after 1988, the plan may not charge for the QPSA prior to the later of the time the participant can waive the QPSA or when the participant is given notice of the right to waive the QPSA.
417(f)(4)
1.401(a)-20 Q&A 21

Line f. In addition to providing an automatic QPSA, a plan that is subject to the survivor annuity rules must generally meet certain notice, election, and consent requirements regarding the QPSA that are similar to the requirements that apply to a QJSA.

The plan must contain election and consent provisions that meet the following requirements. The participant must be given the opportunity to waive the QPSA starting with the first day of the plan year in which the participant attains age 35. Generally, the participant may not be allowed to waive the QPSA before this time, although the plan may provide for an earlier waiver (with spousal consent) if written explanation of the QPSA is given to the participant and the waiver becomes invalid with the beginning of the plan year in which the participant attains age 35. A participant who separates from service before the year in which he or she attains age 35 may elect at any time after separation (with spousal consent) to waive the QPSA with respect to benefits accrued before separation. The participant's written waiver will not be acceptable unless the spouse consents to it in writing during the same election period. Both the participant's waiver and the spouse's consent must state the specific non-spouse beneficiary (including any class of beneficiaries or any contingent beneficiaries). The particular optional form of benefit does not require the spouse's consent. The beneficiary may not be changed without subsequent spousal consent unless in the original consent, the spouse acknowledged the right to limit consent to a specific beneficiary and voluntarily relinquished this right. The plan may permit the surviving spouse, or other beneficiary, to change the form of benefit after the participant's death. All other requirements that apply to the waiver of a QJSA also apply to the waiver of a QPSA (see II.g., above).

A plan must also provide participants with notice explaining the QPSA that is comparable to the QJSA explanation. (See II.g., above.) In the case of a participant who separates from service before age 35, the notice must be given within one year before or after the date of separation. In other cases, the notice must generally be given between the first day of the plan year in which the participant turns age 32 and the last day of the plan year before the participant turns 35. However, if the first anniversary of participation will occur after the end of this period, notice may be given within a year before or after the date of participation. The notice must also be given to currently employed non-vested employees.

The plan does not have to meet these notice, election and consent requirements if it fully subsidizes the QPSA and the participant is not allowed to waive the QPSA or to select a non-spouse beneficiary. For this purpose, a QPSA is fully subsidized if there is no charge or reduction to the benefit for the QPSA coverage. In a defined contribution plan, the QPSA is always fully subsidized as there can be no charge or account reduction. However, if the participant can waive the QPSA or change the beneficiary, then all of the notice, election, and consent requirements will apply.
417(a)
1.401(a)-20 Q&A 10, 27 - 29, 31, 33 - 38
1.401(a)-13(g)

Line g. The plan must provide that a participant will be allowed to change an election previously made at any time during the applicable election period. If the change in election involves a change in beneficiary, other than a change back to a QPSA, the spouse must consent to the change (unless a general consent has been given). A plan may preclude a spouse from revoking consent to a specific waiver, or it may permit revocation of spousal consent.
417(a)
1.401(a)-20 Q&A 30

Line h. A plan may require that a participant and spouse be married throughout the one-year period ending on the date of the participant's death as a condition of QPSA coverage. It may not impose a marriage requirement longer than this. A plan may not discontinue QPSA payments because of remarriage of the surviving spouse. A QDRO may require that a former spouse be treated as a current spouse for QPSA purposes.
401(a)(11)(d)
417(d)
1.401(a)-20 Q&A 25
1.401(a)-13(g)

IV. SPOUSAL CONSENT AND PLAN LOANS

Line a. A plan may not distribute any part of a participant's accrued benefit at any time in a form other than a QJSA or a QPSA without the written consent of the spouse (or surviving spouse) unless the present value of the non-forfeitable benefit does not exceed $5,000 ($3,500 for plan years beginning before August 6, 1997.). Spousal consent is not required for the distribution of a QJSA at any time, but the participant must consent to any distribution while the benefit is immediately distributable (that is, prior to the later of age 62 or normal retirement age (as defined in section 411(a)(8)) unless the present value of the non-forfeitable benefit does not exceed $5,000. No consent (of either the participant, spouse, or surviving spouse) is required for distributions (e.g., cash-outs) prior to the annuity starting date if the present value of the non-forfeitable benefit does not exceed $5,000. If the present value at the time of any distribution exceeds $5.000, the present value at any subsequent time will be deemed to exceed $5,000. For rules relating to the determination of present value in a defined benefit plan, see Worksheet and Explanation No. 2A.
411(a)(11)
417(e)
1.417(e)-1(b)

Line b. A plan may not require a surviving spouse to begin receiving benefits under a QPSA while the benefit is immediately distributable. A benefit is immediately distributable until such time as the participant would have attained the later of age 62 or normal retirement age (as defined in section 411(a)(8)). The plan may distribute the QPSA without spousal consent once it is no longer immediately distributable.
417(e)
1.417(e)-1(b) and -1(c)

Line c. If the plan provides for loans to participants, it must also provide that written spousal consent to the use of the participant's accrued benefit as security for a loan must be obtained, even if the accrued benefit is not the primary security. This requirement applies separately to the renegotiation, extension, renewal, or other revision of an existing loan. The consent of the spouse must be obtained within the 90-day period that ends on the date on which the loan is to be secured. Consent is not needed if the participant is not married at the time the loan is secured or if the participant's total accrued benefit does not exceed $5,000 ($3,500 for plan years beginning before August 6, 1997). Spousal consent is not required if the plan or participant is not subject to section 401(a)(11) at the time the accrued benefit is used as security. Subsequent spousal consent is not needed for a set off of the loan against the accrued benefit on default even if the participant was not married when the loan was secured or is married to a different spouse. The plan may provide that in determining the amount of a QJSA or QPSA, it will reduce the accrued benefit by any security interest held by the plan for an outstanding loan at the time of payment or death, provided the security interest is treated as payment in satisfaction of the loan under the plan.
417(a)(4)
417(c)(3)
1.401(a)-20 Q&A 24