

Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (TD 8219; 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 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 issued 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 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, or merely stating that the single sum distribution does not include the

subsidy that is included in the 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, proposed regulations were published in the **Federal Register** on October 7, 2002 (67 FR 62417) 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 provide disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

After consideration of the comments received concerning the proposed regulations, these final regulations adopt provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

Explanation of Provisions

These regulations provide 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. Commentators generally approved of the increased disclosure that would result from the approach in the proposed regulations, and these final regulations are substantially similar to the proposed regulations.

As 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 provide 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. While one commentator requested that the regulations only permit comparisons to be made on the basis of present value, the regulations do not take this approach. Instead, the final regulations retain the examples of techniques that may be used for this comparison that were included in the

proposed regulation: 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. However, a specific example has been added illustrating the use of the actuarial present value to express relative value.

The comparisons required under the proposed regulations depended on which form of benefit constitutes the QJSA for the participant. One commentator noted that this would result in a different comparison for married and unmarried participants, creating an unnecessary burden for plan sponsors in situations where the benefit options are identical for married and unmarried participants. Furthermore, if the plan sponsor did not know whether a participant is married, the plan would need to provide comparisons that covered both possibilities. In response to the comment, the final regulations permit a plan to use a uniform basis of comparison of relative value (*i.e.*, either the QJSA for married participants or the QJSA for unmarried participants) for both married and unmarried participants, if the benefit options are the same for married and unmarried participants. Thus, in a plan in which the applicable QJSA form for unmarried participants is a straight life annuity and the applicable QJSA form for married participants is a 50 percent joint and contingent annuity (and each of these forms of distribution are available to all participants on the same terms), the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the straight life annuity with respect to the required disclosure for all participants or the plan may choose to compare the relative value of the plan's optional forms of benefit to the value of the 50 percent joint and contingent annuity with respect to the required disclosure for all participants.

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 final regulations follow the proposed regulation in providing for certain simplifications in the disclosure. Under one simplification, two or more optional forms of benefit that have approximately