



New Pension Plan Distribution Rules

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

April 2008

PRACTICE AREAS

Employee Benefits

The Pension Protection Act of 2006 (PPA) imposes new distribution requirements on certain retirement plans. The new requirements are generally effective for distributions with annuity starting dates occurring in plans year beginning after December 31, 2007 and apply to any retirement plan that is subject to the survivor annuity requirements of Internal Revenue Code Section 417 (typically, defined benefit and money purchase pension plans and those profit sharing or 401(k) plans that hold amounts transferred from a defined benefit or money purchase pension plan).

Federal pension law requires that benefits from a retirement plan to which the survivor annuity requirements apply be paid the form of a qualified joint and survivor annuity (QJSA) unless the participant, with the consent of his or her spouse (if applicable), properly elects an alternative form of payment. A QJSA for a married participant is an annuity for the life of the participant, with a survivor annuity for the life of the participant's spouse that is equal to a specified percentage of the amount of the annuity that is payable during the joint lives of the participant and the spouse. That percentage must be at least 50%. The new PPA rules require that married participants have a minimum of two different joint and survivor annuity forms of payment available for retirement payouts. One required form is the QJSA form. The second required form is called a "qualified optional survivor annuity" (QOSA). The QOSA form must be actuarially equivalent to a single life annuity and must provide to the participant's spouse, a continuation percentage of either 50% or 75% of the amount payable to the participant. If the continuation percentage specified in the plan's QJSA is less than 75%, then the QOSA must be a 75% joint and survivor annuity. Otherwise, the QOSA must be a 50% joint and survivor annuity.

If your company maintains a retirement plan that is subject to the survivor annuity requirements, we recommend that the retirement payout forms currently offered to married participants be reviewed. If the current plan provisions offer an optional annuity form of payment that satisfies the new QOSA requirements, no further action is



necessary. Otherwise, the plan must be administered in compliance with the new rules, and a plan amendment reflecting the new QOSA requirements must be adopted on or before the plan's PPA amendment deadline.