

(2) A failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) Such election or revocation is made before such accident occurred.

(g) *Costs of providing joint and survivor annuity form.* A plan may take into account in any equitable manner consistent with generally accepted actuarial principles applied on a consistent basis any increased costs resulting from providing joint and survivor annuity benefits.

(h) *Application and effective date.* (1) Section 401(a)(11) and this section shall apply to a plan only with respect to plan years to which section 411 (relating to minimum vesting standards) is applicable to the plan.

(2) Section 401(a)(11) and this section shall apply if—

(i) The participant's annuity starting date falls within a plan year beginning after December 31, 1975, and

(ii) The participant was an active participant in the plan on or after the first day of the first plan year beginning after December 31, 1975.

For purposes of this paragraph, the term "active participant" means a participant for whom benefits are being accrued under the plan on his behalf, the employer is obligated to contribute to or under the plan on his behalf, or the employer would have been obligated to contribute to or under the plan on his behalf if any contributions were made to or under the plan.

(Sec. 401(a)(11) of the Internal Revenue Code of 1954, 88 Stat. 935 (26 U.S.C. 401(a)(11)))

[T.D. 7379, 40 FR 45810, Oct. 3, 1975; 40 FR 49326, Oct. 22, 1975]

§ 11.401(a)-19 Nonforfeitability in case of certain withdrawals.

(a) *Application of section.* Section 401(a)(19) and this section apply to a plan to which section 411(a) applies. (See section 411(e) and § 11.411(a)-2 for applicability of section 411.)

(b) *Prohibited forfeitures*—(1) *General rule.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if, under such plan, any part of a participant's accrued benefit derived from employer contributions is forfeitable solely because a benefit de-

rived from the participant's contributions under the plan is voluntarily withdrawn by him after he has become a 50 percent vested participant.

(2) *50 percent vested participant.* For purposes of paragraph (b)(1) of this section, a participant is a 50 percent vested participant when he has a nonforfeitable right (within the meaning of section 411 and the regulations thereunder) to at least 50 percent of his accrued benefit derived from employer contributions.

(3) *Certain forfeitures.* Paragraph (b)(1) of this section does not apply in the case of a forfeiture permitted by section 411(a)(3)(D)(iii) and § 11.411(a)-4(b)(5)(i) (relating to forfeitures of certain benefits accrued before September 2, 1974).

[T.D. 7387, 40 FR 51421, Nov. 5, 1975]

§ 11.401(b)-1 Certain retroactive changes in plan.

(a) *General rule.* (1) Under section 401(b), a stock bonus, pension, profit-sharing or annuity plan or bond purchase plan which does not satisfy the requirements of section 401(a) on any day solely as a result of a disqualifying provision (as defined in paragraph (b) of this section) shall be considered to have satisfied such requirements on such day if there is adopted during the remedial amendment period (as determined under paragraphs (c) and (d) of this section) with respect to such disqualifying provision an amendment which causes the plan to satisfy all such requirements of section 401(a), 403(a) or 405(a) for the whole of the remedial amendment period (including extension thereof).

(2) This section shall not apply to any disqualifying provision if the remedial amendment period (as determined under paragraphs (c) and (d)(1) of this section determined without regard to paragraph (d)(2) of this section) with respect to such disqualifying provision ends prior to September 2, 1974.

(b) *Disqualifying provisions.* For purposes of this section, with respect to a plan described in paragraph (a) of this section the term "disqualifying provision" means any provision of—

(1) A plan as adopted,

(2) A plan amendment, or