



Important Information

Plan Administration and Operation

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## Survivor Benefit Rules for Defined Contribution Plans

**WHO'S AFFECTED** Survivor benefit rules apply to all qualified defined contribution plans. Profit sharing plans, including 401(k) plans, are not subject to the survivor benefit rules if certain conditions are met. Governmental plans and certain church plans are exempt from these rules.

**BACKGROUND AND SUMMARY** The survivor benefit protection required by the Retirement Equity Act of 1984 can be divided into two categories. The Qualified Joint and Survivor Annuity (QJSA) affects the form of benefit payment a participant selects. The Qualified Preretirement Survivor Annuity (QPSA) provides a survivor benefit to a participant's spouse if the participant dies before benefit payments begin. There are also specific notice requirements for telling a participant about survivor benefits.

In addition, there are special rules for naming a non-spouse beneficiary for both preretirement and postretirement survivor benefits. This designation requires spousal consent. These rules, as well as the survivor benefit rules and the rules for profit sharing plans, are discussed in detail in this issue of the *Pension Analyst*.

**ACTION AND NEXT STEPS** Plan administrators should review the survivor benefit provisions in their plan documents. Since the spousal consent rules are complex, you may want to review non-spouse beneficiary designations or optional forms of benefit elections you currently have on file to be certain that appropriate spousal consents have been obtained.

This issue of the *Pension Analyst* contains guidance for administering your plan under the survivor benefit rules. We suggest you review and familiarize yourself with this information. If you have questions, please contact your Prudential Retirement Representative.

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All qualified defined contribution plans, including employer-sponsored tax sheltered annuity programs, must comply with the survivor benefit rules. Governmental plans and most church plans are exempt from the survivor benefit rules.

Plans must provide benefits to a surviving spouse both before and after a participant's retirement. A Qualified Preretirement Survivor Annuity (QPSA) provides benefits if the participant dies before benefit payments begin. A Qualified Joint and Survivor Annuity (QJSA) is the automatic form of retirement benefit.

### **Annuity Starting Date**

The Annuity Starting Date (ASD) is important because it determines both the type of benefit payable and the timing for providing the participant with survivor benefit notices. For a single sum payment, the ASD is the date of payment. For an annuity, the ASD is the first day of the first period for which an amount is paid. If a participant is living as of the ASD, a QJSA is automatically paid. If an employee dies before the ASD, the QPSA is paid.

### **Profit Sharing Exception**

A profit sharing plan, including a 401(k) plan, may avoid the standard QJSA and QPSA rules if the following three conditions are satisfied:

- The plan provides that 100% of the participant's vested account balance will be paid to the surviving spouse if the participant dies before the ASD;
- The participant does not elect a life annuity; and
- The participant's account balance does not include any money subject to the standard survivor benefit rules (e.g., transfers from a money purchase or a defined benefit plan).

Some plans (often called "Cash Only" plans) are designed so that QJSA notices and consent are never needed. These plans do not provide annuity payments but may provide installment payments. Installment payments, which do not take into consideration life expectancies, are not considered annuities for these purposes.

Other plans are designed so that some participants qualify for the exception and others do not. If a participant does not choose to take life annuity payments and never transfers survivor benefit assets to the plan, the plan does not have to provide him with QJSA notices or get spousal consent.

However, plan administrators may have to provide other types of notices before making distributions. For example, all participants must receive a Direct Rollover Out of the Plan form at least 30 days but not more than 90 days before ASD. Also, if a participant's vested account balance is more than \$5,000 and the plan offers more than one type of payment option, he must receive a notice describing the optional forms and their relative values in this same timeframe.

In addition, if a participant may name a nonspouse beneficiary for the preretirement death benefit, the plan must provide QPSA notices and get appropriate spousal consent within the standard timeframes discussed below.

If a plan with a profit sharing exception feature merges with a plan that is not subject to the profit sharing exception, the ongoing plan will need to separately account for the account balances subject to the profit sharing exception and those funds not subject to the profit sharing exception rules.

### **Standard Survivor Benefit Rules**

All qualified defined contribution plans that do not meet the profit sharing exception rules must comply with the standard survivor benefit rules.

### **Qualified Preretirement Survivor Annuity (QPSA)**

The plan must provide a surviving spouse with a QPSA when a participant who has a vested account balance dies before ASD. The QPSA is an annuity purchased with at least 50% of the participant's vested account balance at date of death. The surviving spouse receives monthly payments for life. The remaining 50% of the vested account balance, or less, can be paid to anyone the participant has selected, without the need for spousal consent. A plan may provide for a QPSA that exceeds 50% of the account balance.

### **QPSA Notice Requirements**

The plan must provide a written explanation of the QPSA to each vested and nonvested participant by the later of:

- The last day of the plan year preceding the plan year in which the participant reaches age 35;
- One year after an individual becomes a participant; or
- In the case of a participant who separates from service before age 35, one year after separation from service.

The QPSA notice must contain:

- A general description of the QPSA including the terms and conditions of the benefit;
- The participant's right to waive the QPSA;

- A description of alternative death benefits available;
- An explanation of the relative financial effect of the QPSA waiver; and
- The spouse's rights regarding the QPSA waiver.

A plan administrator may use any of the following methods to notify a participant of QPSA coverage:

- Personal delivery;
- Mail;
- Posting the notice on a bulletin board; or
- Including the notice in an employer publication.

The IRS currently does not recognize voice mail or any form of paperless technology, such as email, as a proper QPSA notification method.

### **QPSA Participant Waiver and Spousal Consent**

During the election period, a participant may waive the QPSA and choose a different beneficiary with spousal consent. The election period begins on the first day of the plan year in which the participant reaches age 35 and ends at the participant's death. A participant can revoke any election during this period. A plan may permit an earlier waiver, with spousal consent, if the QPSA notice is given to the participant. However, this waiver becomes invalid on the first day of the plan year in which the participant reaches age 35. If there is no new waiver after that date, the participant's spouse must receive the QPSA benefit if the participant dies before ASD.

A spouse's consent to a QPSA waiver is effective only if it:

- Is in writing;
- Acknowledges the effect of the waiver;
- Consents to a designated beneficiary; and
- Is witnessed by a plan representative or notary public.

A spouse may give either general or specific consent to a designated beneficiary. General consent permits the participant to change a beneficiary without further spousal consent. Specific consent means that the spouse consents to a specific beneficiary for the QPSA and new consent must be given if a different beneficiary is named.

Spousal consent is not required if:

- The participant is unmarried;
- The spouse cannot be located; or
- There is a court order stating that the participant is legally separated or has been abandoned by the spouse.

Since the plan may be held liable for the spousal benefit if a locatable spouse has not consented, a plan administrator should take reasonable steps to locate a missing spouse.

Such steps could include:

- Checking through other records (such as employer-provided medical insurance coverage) to confirm the existence or nonexistence of the spouse or
- Using the IRS lost participant program.

### **Qualified Joint and Survivor Annuity (QJSA)**

A QJSA provides an annuity for the life of a participant with a survivor annuity payable for the life of the spouse. The survivor annuity must be at least 50% but not more than 100% of the annuity the participant was receiving. If a participant is not married when he retires, he will automatically receive a life annuity.

### **QJSA Notice Requirements**

If a participant's vested account balance exceeds \$5,000 at the time of distribution, the plan must provide a written explanation of the QJSA. The notice must be given at least 30 days before the ASD, but not more than 90 days before the ASD.

However, the 30-day minimum notice requirement may be waived by a participant's affirmative election to receive a distribution. A plan may make the distribution as soon as that election is received, as long as the participant's spouse does not have to consent to the distribution. If the spouse's consent is needed, the plan may make the distribution upon receiving the participant's election and the spouse's consent to that election within the 30-day period but no earlier than the eighth day after the notices were provided.

If a distribution is going to be made in the form of an annuity, the notices may be provided after the official "annuity starting date." This permits plans to make retroactive annuity payments in situations where a participant has retired and distribution of the appropriate election and consent notices is delayed until after that retirement date.

The QJSA is not payable if the account balance does not exceed \$5,000.

The QJSA notice must contain the following specific information:

- A general description of the QJSA;
- The timing for providing the QJSA;
- The participant's right to waive the QJSA;
- A description of optional forms of benefit and enough information to explain the relative effects of the optional forms; and
- The rights of the participant's spouse.

### **QJSA Participant Waiver and Spousal Consent**

A participant may waive the QJSA no more than 90 days before his ASD. During this period, a participant may choose a form of payment with no survivor benefit payable (e.g., single sum or life annuity) or a form of payment with survivor benefits payable to the spouse or other beneficiary. A participant may revoke any election until his ASD.

For a QJSA waiver to be valid, the participant's spouse must consent to the waiver within the waiver period. The consent must contain the same items that are in the QPSA spousal consent. Also, as with the QPSA, spousal consent is not required if the participant does not have a spouse, the spouse cannot be located or a court order states that the participant is legally separated or abandoned by the spouse.

A spouse may give either a general or specific consent to a QJSA waiver depending on the plan provisions. A general consent permits the participant to waive a QJSA and change the form of payment without further spousal consent. In a specific consent, the spouse consents to a specific form of payment or specific beneficiary. In addition, a spousal consent may be either revocable or irrevocable, as specified in the plan.

### **In-Service Withdrawals and Loans**

Participants in money purchase pension plans cannot take withdrawals from their accounts while they are still employed. However, most profit sharing plans do allow in-service withdrawals. If the profit sharing exception applies to the participant, the spouse does not have to consent to this type of distribution. In all other situations, the spouse must consent to an in-service withdrawal and the resulting reduction of both the QPSA and QJSA.

If a participant meets the profit sharing exception rules at the time he takes a loan, his spouse does not have to give consent to the loan. Spousal consent is also not needed if the amount of the account balance securing the loan is \$5,000 or less. In all other situations, a participant's spouse must consent to a loan not more than 90 days before the date the loan is made. If a participant later defaults on the loan and the plan forecloses on the account balance to satisfy the loan, spousal consent to the foreclosure is not needed if no consent was needed at the time the loan was made or consent was obtained at that time.

In addition, a change in marital status does not affect the consent to a loan. If a participant is not married when a loan is requested and later marries, the participant is considered to have obtained spousal consent. In the event of divorce and remarriage, the original spouse's consent to a loan is considered acceptable.

### **Next Steps**

Plan administrators should watch out for changes in marital status and changes in spouses to ensure that the appropriate waivers and consents are obtained and kept in their records.

#### **Pension Analyst by Prudential Retirement**

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