

Advanced Look at PPA Document Domestic Partners and Beneficiaries

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Retirement & Benefits Compliance
Customer Conference

Agenda

- General Rules
 - Special spouse rules
 - Special beneficiary rules
- DOMA and *US vs Windsor*
- Domestic Partners PPA language
- How can we make things better for PPA?
 - Sample policies
 - Changes to forms



Caveats

- PPA Documents are DRAFT documents
- Plan language and options are subject to change during IRS review process

"spouse"

- Term is used 110 times in PPA document
- "spouse" is not defined (EGTRRA and PPA)
- When does being a "spouse" matter?
 - QJSA and consent for distributions
 - Distributions upon death/RMD rules
 - Default beneficiary rules

Qualified Joint and Survivor Annuities

- When do QJSA rules apply?
 - Money purchase or target benefit plan
 - Transfer from account subject to QJSA
 - Benefit paid as annuity
 - QJSA is normal form of benefit
 - Generally only accounts of \$5,000 or more (unless document provides otherwise)
- If QJSA rules apply, QJSA is default form of payment unless waived, must also be offered:
 - Qualified Optional Survivor Annuity (QOSA) and
 - Qualified Preretirement Survivor Annuity (QPSA)



QJSA, QPSA and QOSA

- QJSA: life annuity to the participant and a survivor annuity for the spouse after the participant's death (50 - 100 percent of the amount of the annuity) payable during the joint lives of the Participant and the spouse
- QOSA: offered as another optional form of benefit with a survivor annuity percentage (Plan Years beginning after December 31, 2007)
 - QJSA < 75%, QOSA: 75%
 - QJSA > 75%, QOSA: 50%
- QPSA: if Participant dies before the Annuity Starting Date at least 50% of the Participant's vested Account balance shall be applied toward the purchase of an annuity for the life of the surviving spouse



QJSA Rules

- QJSA is default form of payment unless waived
- Waiver period: begins on the first day of the 180-day period ending on the Annuity Starting Date and ends on the later of the Annuity Starting Date or the 30th day after the Plan Administrator provides the Participant with a written explanation of the Qualified Joint and Survivor Annuity



QJSA Waiver

- All of the following
 - Election
 - designates a specific beneficiary which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent);
 - designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent).
 - Participant's spouse
 - consents in writing,
 - acknowledges the effect of the election;
 - consent is witnessed by a plan representative or notary public

or

- No spouse or spouse cannot be located, waiver will be deemed a qualified election.
 - IRC 417 – optional 1 year marriage rule (new option in PPA document)



QJSA Rules Generally Affect All Distributions

- Spousal consent
 - Loans and
 - In-service distributions



Distributions at Death

- Options - begin payment by or pay out by:
 - End of the 60th day following the end of Plan Year in which death occurs
 - End of the 5th year
 - Allow spouse to extend to later of:
 - 12/31 of calendar year following death
 - 12/31 of calendar year in which participant would have obtain age 70-1/2
- Extended payments may be restricted to spouse



Beneficiary Designations

- Participant can designate beneficiaries (subject to QJSA waiver if applicable)
- Default rule (7.04(c)):

"In the event that the Participant fails to designate a Beneficiary, or in the event that the Participant is predeceased by all designated primary and secondary Beneficiaries, the death benefit shall be payable to the Participant's spouse or, if there is no spouse, to the Participant's children in equal shares or, if there are no children to the Participant's estate."



New PPA AA Option

- a.** Death benefits when there is no designated beneficiary:
 - i.** Standard according to Section 7.04(c)
 - ii.** Custom
- Custom could be used to add domestic partner as a default if no spouse exists.
- Recommend that "Domestic Partner" be defined in the custom language



New PPA AA Option

- b. []** Revocation. A beneficiary designation to a spouse shall be automatically revoked upon the following circumstances: _____.

NOTE: *If revocation is selected you may use this item to indicate automatic revocation upon divorce.*

Revocation Upon Divorce

- Use caution!
- Divorce vs separation – *recommend against separation*
- Does the plan intend to collect divorce decrees to ensure information provided is accurate?
- What happens if participant never tells the plan he/she divorced?



Special Beneficiary Rules

- In general, can step in with similar rights of Participant after Participant's death
 - Investment elections (if self-directed)
 - Direct rollovers as if spouse (effective 2007)
- Hardship rules – optional extension of hardship criteria to include beneficiaries



QDROs

- Note that a QDRO/alternate payee can override existing beneficiary/spouse rights

DOMA - 1996

SECTION 1. SHORT TITLE. This Act may be cited as the `Defense of Marriage Act'.

SEC. 2. POWERS RESERVED TO THE STATES.

`No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.'.

SEC. 3. DEFINITION OF MARRIAGE.

`In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.'.



US v. Windsor – Facts/Background

- Edith Windsor and Thea Spyer married in Ontario, Canada in 2007
- Spyer died in 2009
- Windsor paid extra \$363,053 in federal taxes b/c not recognized as spouse
- DOJ refused to defend
- BLAG allowed to intervene



US v. Windsor

- Windsor's facts give her an injury under section 3 of DOMA – federal rule interpreting "spouse" as between man and woman
- SCOTUS rules section 3 is unconstitutional under the 5th Amendment (equal protection)



DOMA: Post-Windsor

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...

- The federal government must recognize state marriages
 - State of residence or state of celebration?
- Whether a marriage is recognized in a State is a matter of state law



What To Do Post-DOMA?

- For ftwilliam.com documents: No changes
- Wait for guidance/claims



PPA Plan Language

- Created optional, additional term "Domestic Partner":

"Domestic Partner" means, unless otherwise specified in the Adoption Agreement, a same sex partner if the Participant is in a civil union or similar relationship recognized under the laws of any state. A Participant may only have one Domestic Partner. A Participant may not have a Domestic Partner if the Participant is legally married to a person.

If Domestic Partners are treated as a spouse under this Plan, Section 7.10 applies and a Domestic Partner instead of a spouse is the beneficiary of the survivor annuity, the term "Qualified Joint and Survivor Annuity" shall be modified to "Joint and Survivor Annuity" and "qualified preretirement survivor annuity" shall be modified to "preretirement survivor annuity".



AA Options

c. Domestic Partners are treated as a spouse under the terms of this Plan for purposes of death benefits to the extent applicable:

i. No

ii. Yes - limited to the following terms and conditions:

iii. Yes _____

d. The term "Domestic Partner" as defined in Article 2 is modified in the following manner: _____

NOTE: Domestic Partners shall not be treated as a spouse under the following Sections of the Plan: 7.02(b) (distribution upon death), 7.05 (minimum distributions) and 7.06 (direct rollovers).



Considerations

- Keeping rights/benefits to marriage administratively simpler
- If Company primarily works in a state, tie the definition to that State's law
- Don't take this lightly - 411(d)(6) cut-back issues if you decide the rule does not work



Summary

	Spouse	Domestic Partner [¥]	Beneficiary
QJSA rights*	✓	"JSA"	
Extended payments at death/RMDs	✓		
Direct Rollovers	✓		✓
Default beneficiary	✓	✓	€
Hardship criteria	✓	✓	✓ [¥]

¥ If elected

* If QJSA applies, spousal/domestic partner consent needed on distributions and naming other beneficiaries.

€ Per standard ftwilliam.com language, default only includes spouse. Custom default rule could be used in document.



Beneficiary Designation Form

- Allow participants to set up primary and secondary beneficiaries (with percentages)
- "Unless otherwise specified above, if none of the beneficiaries designated above survive me, payment shall be made pursuant to the applicable provisions of the Plan."



Distribution Form

- It can be complicated, includes in-service and RMDs – all could be subject to QJSA
- Splitting out into multiple forms for different purposes?
- Custom instructions/information



Form Enhancements for PPA

- Multiple versions of distribution forms
 - Different accounts are subject to QJSA
 - Transfer money from MP
 - Annuity is an option (and not default form)
 - Forms for single/married participants?



Continuing Education

Please – before you leave:

1. Sign in

- Verify your attendance
- Check the box if you want your attendance reported to IRS (for ERPA reporting and those with a PTIN only)

2. Pick up your certificate of attendance

- Certificates will not be emailed after the conference

