

Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984

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A. Background

The Retirement Equity Act of 1984 (REA) amended the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code) to require all defined benefit pension plans to provide a qualified preretirement survivor annuity (QPSA) to the surviving spouse of any participant with vested benefits who dies prior to commencing retirement benefits.

ERISA § 205(e) generally defines a QPSA as a survivor annuity for the life of the surviving spouse with payments not less than the amount payable under the survivor portion of the qualified joint and survivor annuity (QJSA) assuming the participant had started the QJSA on the later of the day preceding the participant's date of death or the earliest retirement age under the plan.

From 1984 until 1997, PBGC took the position that QPSA benefits were not guaranteed benefits if the participant died on or after the plan termination date (DOPT). As a substitute for the QPSA, PBGC provided a preretirement survivor annuity (PSA), described in the appendix to this internal guidance document. In 1997, PBGC determined that, subject to the limitations of ERISA § 4022(b), PBGC is required under ERISA to guarantee the QPSA benefit that is provided under a terminated plan. PBGC provides QPSA coverage on and after DOPT to all participants within the scope of this internal guidance document free of charge.

The fifth edition of this internal guidance document has been revised to increase the de minimis threshold from \$5,000.00 to \$7,000.00 for plan terminations on or after January 1, 2024, in line with the updated dollar limit for mandatory distributions under section 304 of the SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023. (For plan terminations on and before December 31, 2023, the de minimis threshold remains \$5,000.00.) Also, we remove language from the scope section that may have erroneously suggested that PBGC provides QPSA benefits where the participant did not earn credited service under the plan after August 23, 1984 (the enactment date of REA) and the plan had not extended QPSA coverage to such individuals.

B. Scope and Effective Date

This internal guidance document applies to any plan trusted by the PBGC with a DOPT on or after August 23, 1984, REA's date of enactment.

C. Definition

Earliest QPSA commencement date is the earliest annuity starting date for the payment of a QPSA. The earliest QPSA commencement date is the later of (a) the first day of the month on or after the participant's Earliest PBGC Retirement Date (EPRD) described in section C of Internal Guidance Document Earliest PBGC Retirement Date, and (b) the first day of the month following the month of the participant's death. The earliest QPSA commencement date can be no later than the surviving spouse's required beginning date described in section D of Internal Guidance Document Required Beginning Dates.

D. Internal Guidance

1. General Rule

QPSA benefits payable to the surviving spouse of a deceased participant (including an alternate payee entitled to all or part of a participant's QPSA benefit under a QDRO) are guaranteeable benefits regardless of whether the participant dies before or after DOPT. The QPSA benefit payable to the spouse of a vested participant is a nonforfeitable pension benefit. The amount, form, and annuity starting date of the QPSA benefit will be determined in accordance with plan provisions except that the surviving spouse may begin receiving the QPSA benefit no earlier than his or her earliest QPSA commencement date. Conditions for retroactive payment of QPSA benefits are described in section D of Internal Guidance Document Annuity Starting Dates. A plan benefit that meets the statutory definition of a QPSA will be treated as a QPSA for Title IV purposes even if the plan does not identify the benefit as a QPSA.

a. Deferral of Starting Date

The surviving spouse may elect to start the QPSA benefit as of the first day of any month on or after earliest QPSA commencement date. The spouse cannot defer the start of the QPSA benefit beyond his or her required beginning date as described in section D of Internal Guidance Document Required Beginning Dates.

b. Plans with Mandatory Employee Contributions

For plans with mandatory employee contributions, PBGC will determine the QPSA benefit based upon the participant's benefit derived from both employer and employee contributions, excluding benefit amounts attributable to withdrawn mandatory employee contributions.

c. Disability Benefits

QPSA coverage applies until the earlier of a participant's death or annuity starting date. For purposes of this internal guidance document, the annuity starting date for a participant entitled to a disability benefit depends on whether the disability benefit is an "auxiliary benefit." The annuity starting date for a participant who is receiving a disability benefit that is not an "auxiliary benefit" is the first date on which the participant's disability benefit

becomes payable. The annuity starting date for a participant who is receiving a disability benefit that is an "auxiliary benefit" is the date on which the participant's disability benefit converts to either a QJSA benefit (normal or early retirement) or other retirement benefit under the plan. Determination of whether a participant's disability benefit is an "auxiliary benefit" will be made in accordance with the Code and IRS rules. See also section G of Internal Guidance Document Disability Benefits.

2. Special Rules

a. QPSA Charges and Elections

Some plans charge for QPSA coverage. Plans that charge for QPSA coverage must provide written notice of the charge to participants and the opportunity for participants, with spousal consent, to waive QPSA coverage. The charge generally accrues for each month of coverage up to retirement or death and is collected in the form of a reduction to the monthly annuity.

1) Participant Death on or after DOPT

PBGC will provide QPSA coverage free of charge on and after DOPT, regardless of whether the participant (with spousal consent) waived QPSA coverage prior to DOPT and regardless of any charges the plan would have applied. Because QPSA coverage is free of charge, QPSA notices and elections are not required. Any post-DOPT PSA charges that PBGC has assessed will be refunded. PBGC, however, will apply any plan charges for QPSA coverage prior to DOPT in accordance with section a.2 below.

2) Participant Death before DOPT

PBGC will assess any plan QPSA coverage charges for the period before DOPT in accordance with plan provisions when it determines the participant's or surviving spouse's benefits at DOPT, but only to the extent such provisions comply with ERISA (e.g., only for periods after the plan allowed the participant to waive QPSA coverage and provided notice of the ability to waive).

Example: Pre-DOPT accrual of QPSA charges

Sam worked for the ABC Company for 10 years. He was 53 years old and had been married to Carol for fifteen years when the ABC Company Pension Plan terminated October 1, 2003. Sam and Carol accepted the ABC Company's QPSA coverage. The plan charged 0.02% per month of coverage. Sam had 120 months of QPSA coverage before the plan ended.

Sam started his annuity from PBGC October 1, 2005. Sam's accrued monthly benefit is \$1,500 as a J&50%S. Sam's plan benefit is fully guaranteed.

The ABC Plan's pre-DOPT QPSA coverage charge is 2.4% (120 months of coverage x 0.02% per month of coverage).

PBGC does not assess any additional charge for QPSA coverage for the period after DOPT.

Sam's monthly benefit from PBGC is \$1,464 (\$1500 reduced by 2.4%). If Sam dies first, Carol's survivor benefit will be \$732 (half of \$1,464) for the rest of her life.

b. Plans with Length of Marriage Requirements for QPSA coverage

Pension plans may require that a participant have been married for up to one year before Qualified Preretirement Survivor Annuity (QPSA) coverage applies. Plans with a marriage requirement may deny QPSA benefits if a participant has not met the plan's marriage requirement as of the participant's death. Internal Guidance Document Marriage Requirements provides guidance for applying a plan's marriage requirement for QPSA coverage.

1) Participant Death before DOPT

See section C.2.a.1 of Internal Guidance Document Marriage Requirements.

2) Participant Death on or after DOPT

See section C.2.b.1 of Internal Guidance Document Marriage Requirements.

c. Pay Status PSA Spouses/Spousal PSA Benefit Determinations

Surviving spouses who were receiving a preretirement survivor annuity (PSA) or had been notified that, at some future date, they would receive a specific benefit under the internal guidance document "Payment of Pre-retirement Survivor Annuities in PBGC-Trusteed Plans Terminating on and after August 23, 1984" will be entitled to receive the greater of the monthly benefit determined under the PSA internal guidance document (determined in accordance with the Appendix to this internal guidance document) or the plan QPSA.

d. Plans Lacking a QPSA Benefit

In a plan covered by this internal guidance document but not amended to provide a QPSA, PBGC will provide a QPSA to the surviving spouse of a deceased, vested participant. The amount of the QPSA will be the minimum QPSA required by ERISA (basically the "survivor's" portion of the plan's QJSA) with no charge. A QJSA, as defined in ERISA § 205(d), is an annuity for the life of the participant with a survivor annuity for the life of the spouse that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse, and that is the actuarial equivalent of a single life annuity for the life of the participant. If a plan does not have a QJSA, PBGC will treat the plan as if it contained a QPSA equal to the survivor portion of a joint and 50% survivor annuity (calculated using joint and survivor factors determined by PBGC).

e. Lump sum in lieu of QPSA

1) Deceased participant entitled to de minimis lump sum as of date of death

i. Death on or after DOPT

If a married participant who is entitled to a lump sum payment under 29 CFR 4022.7(b)(1)(i) dies before going into pay status, PBGC will make the lump sum distribution to the designated beneficiary or, if none, the person or estate entitled in accordance with Internal Guidance Document Beneficiaries. There will be no annuity option for the beneficiary or estate. The surviving spouse, if any, will not be entitled to a QPSA and will not have the right to elect a QPSA in lieu a lump-sum distribution.

ii. **Death before DOPT**

If a married participant who is entitled to a lump sum payment of \$5,000 or less for plans terminating on and before December 31, 2023, or \$7,000.00 or less for plans terminating on and after January 1, 2024, dies before DOPT and before going into pay status, PBGC will follow plan provisions regarding payment of a lump sum in lieu of a QPSA.

2) Deceased participant not entitled to de minimis lump sum as of date of death

If the lump sum value of annuity payments to a surviving spouse under a QPSA is \$5,000 or less for plans terminating on and before December 31, 2023, or \$7,000.00 or less for plans terminating on and after January 1, 2024, and the annuity benefit has never been in pay status, the benefit will be paid in a lump sum unless otherwise elected by the surviving spouse, regardless of whether the participant's death occurred before or after DOPT.

PBGC will calculate the annuity payable to the surviving spouse starting on the surviving spouse's earliest QPSA commencement date or, if later, the first day of the month on or after DOPT. PBGC will value the annuity as of DOPT using PBGC's lump sum rates.

f. **QPSA coverage after application for retirement**

If a participant makes a valid election for a benefit form that provides a life annuity to the surviving spouse of at least 50% but no more than 100% of the amount of the annuity that is payable during the joint lives of the participant and the spouse, and the participant dies before the annuity starting date, the elected annuity form will be treated as the QPSA.

Example (1) J&75%S Elected:

The Qualified Joint and Survivor Annuity (QJSA) in Sam's plan is a \$1200 per month J&50%S annuity. Sam, with the consent of his spouse, Carol, elects PBGC's optional \$1000 per month J&75%S annuity. Sam dies before his annuity starting date. The validly elected J&75%S annuity will be treated as the QPSA. Carol will be paid \$750 per month for her life.

Example (2) 15C&C elected:

The QJSA in Sam's plan is a \$1200 per month J&50%S annuity commencing on Sam's EPRD. Sam, with the consent of his spouse, Carol, elects PBGC's optional \$1100 per month 15C&C annuity. Sam dies before his annuity starting date. Because the elected

15C&C does not pay a survivor benefit for Carol's life, it will not be treated as the QPSA. Carol is entitled only to the plan's QPSA.

Appendix

PSA Benefits

surviving spouses who will receive a PSA are entitled to a benefit determined under this Appendix, which summarizes the PSA rules under previous internal guidance document.

1. Availability

The surviving spouse may begin receiving the PSA benefit no earlier than the first day of the month following the month in which (a) the participant died, or (b) the participant would have attained the earliest early retirement age at which he or she would have become eligible for a benefit under the plan, whichever is later.

2. Amount and Form of Benefit

The amount of the spouse's benefit will be computed by first determining the benefit that the participant would have been entitled to receive on the earliest date determined under step 1. Availability, above, in the normal form for unmarried participants under the plan. Plan early retirement factors are used. That benefit will then be converted to an actuarially equivalent joint-and-50% survivor annuity (contingent basis), using the PBGC factors for converting the maximum insurance limit for a single life annuity amount to a joint and 50% survivor annuity amount. The surviving spouse will be paid the amount of that 50% survivor annuity. (For plans with mandatory employee contributions, see paragraph 5.).

3. Deferral of Starting Date

The surviving spouse may elect to start the PSA benefit as of the first day of any month on or after the benefit is first available under paragraph 1., above. The benefit paid will be determined by converting the survivor annuity described in step 2. Amount and Form of Benefit, above. to a present value and then converting this present value to an actuarially equivalent benefit payable on the deferred annuity starting date selected by the surviving spouse. ASD will develop factors for computing benefits under this paragraph using the PBGC rates in effect at termination of the plan for valuing deferred benefits.

4. Marriage Requirement

There is no minimum period of time for which a participant must have been married prior to the death of the participant for preretirement survivor annuity coverage.

5. Mandatory Employee Contributions

In the case of a pension plan that required mandatory employee contributions, the participant's entitlement to a refund of those contributions will not be affected by this internal guidance document. If the surviving spouse of a participant in such a plan who has elected and received a refund becomes entitled to a preretirement survivor annuity, the benefit will be determined based solely on the employer contributions. (If mandatory employee contributions have not been

withdrawn and the participant dies before going into pay status, the mandatory contributions will be refunded in accordance with plan provisions and PBGC regulations and internal guidance document.)

6. Disability Benefits

PSA coverage applies until the earlier of a participant's death or annuity starting date. For purposes of this internal guidance document, the annuity starting date for a participant entitled to a disability benefit depends on whether the disability benefit is an "auxiliary benefit." The annuity starting date for a participant who is receiving a disability benefit that is not an "auxiliary benefit" is the first date on which the participant's disability benefit becomes payable. The annuity starting date for a participant who is receiving a disability benefit that is an "auxiliary benefit" is the date on which the participant's disability benefit converts to either a QJSA benefit (normal or early retirement) or another optional retirement benefit under the plan. Determination of whether a participant's disability benefit is an "auxiliary benefit" will be made in accordance with the Code and IRS rules. See also **Section G** of Internal Guidance Document Disability Benefits.