



BENEFIT NEWS BRIEFS

Automatically Revoking Spousal Beneficiary Designations on "Legal Separation" Can Lead to Pension Plan Errors

In *Employee Plans News, Issue 2013-3*, September 13, 2013, the IRS warned of the possible consequences of pension plans that *automatically revoke* a spousal beneficiary upon a couple's "legal separation." The entire newsletter is available at http://www.irs.gov/pub/irs-tege/eptn_2013_3.pdf.

We will concentrate on just the information on automatic revocation of spousal beneficiary designations upon a couple's "legal separation." If your pension plan has such "automatic revocation" upon legal separation language it must be amended as discussed at the end of this *Benefit News Briefs*. This includes individually designed plans like multiemployer pension plans.

According to the IRS, *automatically* revoking a participant's designation of his or her spouse as beneficiary when the participant is legally separated *may cause a plan to violate the spousal death benefit rules*. This is something to be avoided.

The IRS newsletter noted that a qualified retirement plan must provide that it will pay at least 50% (100% for profit-sharing plans) of a participant's death benefits to the participant's current spouse, **unless** the participant has waived this spousal benefit, with his spouse's consent.

These qualified pre-retirement survivor annuity (QPSA) rules apply regardless of whom the participant designates as his beneficiary. The QPSA rules are at Code Sections 401(a)(11) and 417 and the implementing regulations. This IRS guidance on automatic revocations is discussed below.

The Effect of "Legal Separation" On Spousal Beneficiary Designations

The article stated that some pension plans are written to automatically revoke a participant's spousal beneficiary designation when the participant *divorces* or is *legally separated*.

One might think this automatic revocation language would eliminate the requirement for the pension plan to pay a QPSA to the *legally-separated* surviving spouse. *One would be wrong to think so.*

The IRS explained that a *legal separation* only *eliminates* the requirement that a *participant obtain spousal consent to waive the spousal death benefit* and name another beneficiary. Unless the participant has: (1) waived the death benefit, and (2) specifically designated another beneficiary, the *legally separated spouse* **must** still receive the spousal death benefit

Plan language automatically revoking a “legally separated” participant’s beneficiary designation does NOT affect the separated spouse’s right to QPSA benefits.

The IRS continued that although a “legally separated” participant can *waive* the spousal death benefit without spousal consent, a plan’s automatic revocation language, by itself, doesn’t satisfy the waiver rules. In other words, *automatically revoking* a beneficiary designation in cases of “legal separation” **has no effect** on the legally-separated spouse’s rights to death benefits under the QPSA rules.

A “legally separated” participant can waive the spousal death benefit, without spousal consent and specifically designate another beneficiary. It’s the “automatic” revocation plan language that is the problem.

The IRS warned that a plan’s *automatic revocation language* for “legal separation” is often misunderstood as **eliminating** a legally-separated spouse’s right to death benefits, and may cause a plan administrator to pay death benefits to the wrong person. Paying the wrong person the death benefit, especially if substantial, often leads to litigation.

Are There IRS Requirements to Change Pension Plan Language?

Yes, if your pension plan contains *automatic revocation upon legal separation* language the IRS says the pension plan must be amended. (Note, however, that *automatic revocation upon divorce* is language still allowable.)

According to the IRS newsletter, *individually designed plans* – like most multiemployer pension plans – that contain *automatic revocation* language triggered by “legal separation” must either:

- eliminate this language, or
- clarify that the revocation does not affect the spouse’s rights to the QPSA death benefits.

While this may sound simple, in some plans it could get complicated. The IRS gave an example of a pension plan that provides that the surviving spouse is entitled to a benefit equal to 50% of a participant's benefit, but then allows the participant to designate a *different beneficiary* for the remaining 50% of the benefit.

According to the IRS, such a pension plan must be amended to specify that the automatic "legal separation" revocation only affects the beneficiary of the 50% non-spousal benefit, i.e. an *automatic revocation* would still leave the surviving spouse entitled to 50% of the participant's benefit, but the beneficiary of the other 50% of the benefit would be automatically revoked.

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