

Failure to Obtain Spousal Consent

A Segment in Our Retirement Rescue Series

If a Qualified Joint and Sponsor Annuity (QJSA) is required by your Plan, a married participant cannot elect a different form of benefit distribution without the consent of their spouse.

Does your Plan need to be rescued?

Qualified Joint and Sponsor Annuity

A Qualified Joint and Sponsor Annuity, QJSA, is an annuity which provides a life annuity to the participant and a survivor annuity to the participant's spouse following the participant's death. The survivor annuity must be equal to between 50 and 100 percent of what was paid by the annuity during the participant's life. A QJSA is the required benefit distribution method for defined benefit plans, money purchase plans, and target benefit plans.

A QJSA is also required under a profit sharing or stock bonus plan unless the plan satisfies each of the following requirements:

- ⇒ The death benefit of the plan is payable in full to the surviving spouse unless the spouse has consented to another beneficiary.
- ⇒ A life annuity cannot be elected in the plan or the participant does not elect into the plan's life annuity option.
- ⇒ The benefit is not the result of a direct transfer from another plan which was required to provide a QJSA.

If the QJSA rule applies, a QJSA is mandatory unless the participant elects another benefit distribution form allowed under the plan. This election, however, is not effective unless approved by the participants' spouse, if applicable. One exception is if the participant's benefit is \$5,000 or less which may be paid in a lump sum instead of an annuity without spousal consent.

The Problem

A common plan error occurs when a plan distributes a benefit by a method other than the QJSA without spousal consent. This mistake may originate from a participant being erroneously categorized as unmarried in plan records.

A failure to obtain spousal consent is considered operational in nature and can lead to plan disqualification. The Employee Plans Compliance Resolution System, EPCRS, should be used for correction.

Correction

Using the EPCRS Voluntary Correction Program (VCP), the Plan Sponsor is generally required to notify the participant and spouse of the error so the spouse can provide proper consent. If the spouse cannot be located or does not provide consent, he or she is entitled to the benefit that would have been paid from the survivor annuity of a QJSA upon the participant's death.