
Sample Language for a Spouse's Waiver to a QJSA or a QPSA

Notice 97-10

I. PURPOSE

This Notice provides sample language designed to make it easier for spouses of plan participants to understand their rights to survivor annuities under qualified plans. The sample language can be included in a form used for a spouse to consent to a participant's waiver of a qualified joint and survivor annuity (QJSA) or qualified preretirement survivor annuity (QPSA), or to a participant's choice of a non-spouse beneficiary in a defined contribution plan not subject to the QJSA and QPSA requirements.

The language is designed to assist plan administrators in preparing spousal consent forms that meet the statutory requirements. No one is required to use the sample language, and plan administrators that choose to use it are free to incorporate all or any part of it in their spousal consent forms.

II. BACKGROUND

Section 401(a)(11) of the Internal Revenue Code of 1986 provides that, in order to be qualified under section 401(a), all defined benefit plans and certain defined contribution plans must provide benefits in the form of a QJSA and in the form of a QPSA. Section 417 permits a participant to waive the QJSA and to elect another form of retirement benefit, or to waive the right to a QPSA, if the participant's spouse signs a consent form.

Section 417(a)(3) requires that the plan provide an explanation to the participant of the QJSA and of his or her right to waive the QJSA within a reasonable time before the participant's annuity starting date. However, effective for plan years beginning after December 31, 1996, section 417(a)(7)(A) provides that a plan can provide the explanation after the annuity starting date, but the required election period must not end

earlier than 30 days after notice was given to the participant. Section 417(a)(3)(B) requires the plan to provide an explanation to the participant of the QPSA and of his or her right to waive the QPSA within the applicable period, as defined in section 417(a)(3)(B)(ii).

Section 417(a)(2)(A)(i) provides that, in order for a participant to elect to waive the QJSA or QPSA, the spouse of the participant must consent in writing to the election. Section 417(a)(2)(A)(ii) provides that, in general, the waiver of, and the consent to a waiver of, a QJSA must state the specific nonspouse beneficiary who will receive the benefit and the particular optional form of benefit. The waiver of, and the consent to a waiver of, a QPSA must state the specific nonspouse beneficiary who will receive the benefit but is not required to state the form of benefit selected (if any). However, a plan may permit a spouse to execute a general consent that allows the participant to waive the QJSA or the QPSA, and change the designated beneficiary or the optional form of benefit payment, without obtaining further consent of the spouse. Section 1.401(a)-20, Q&A-31(c), of the Regulations provides that a general consent must acknowledge that the spouse has the right to limit his or her consent to a specific beneficiary and a specific form of payment (where applicable) and that the spouse elects to relinquish both of these rights. Section 417(a)(2)(A)(iii) requires that the spouse's consent acknowledge the effect of the participant's waiver of the QJSA or QPSA and requires that the consent be witnessed by a plan representative or a notary public.

Under section 401(a)(11), to the extent a defined contribution plan that is not subject to the QJSA and QPSA requirements, the plan must provide that the participant's nonforfeitable account balance be paid in full to the participant's surviving spouse upon the participant's death. The account balance can be paid to another beneficiary if the participant so elects and the spouse consents to the election. In general, the spousal consent must meet the same conditions as a consent to the waiver of a QPSA.

Section 1457 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, directs the Secretary of the Treasury ("Secretary") to develop sample language, written in a manner calculated to be understood by the average person, that can be included in a form used for a spouse to consent to a participant's waiver of a QJSA or a

QPSA. This Notice contains the sample language for the spousal consent forms. Section 1457 also directs the Secretary to publish sample language that can be included in a qualified domestic relations order (QDRO). The QDRO sample language is contained in Notice 97-11 in this Bulletin.

III. SAMPLE LANGUAGE

The Appendices to this Notice contain four sets of sample language:

- Appendix A contains sample language that can be included in a spouse's consent to a participant's waiver of a QJSA. This language can be used for a defined benefit plan and for a defined contribution plan to the extent that it is subject to section 401(a)(11).
- Appendix B contains sample language that can be included in a spouse's consent to a participant's waiver of a QPSA, and, if the plan so provides, to the participant's choice of a beneficiary other than the spouse to receive any survivor benefit. This language can be used for a defined benefit plan.
- Appendix C contains sample language that can be included in a spouse's consent to a participant's waiver of a QPSA, and, if the plan so provides, to the participant's choice of a beneficiary other than the spouse to receive any survivor benefit. This language can be used for a defined contribution plan to the extent that it is subject to section 401(a)(11).
- Appendix D contains sample language that can be included in a spouse's consent to a participant's choice of a beneficiary other than the spouse for a participant's account balance. This language can be used for a defined contribution plan to the extent that it is not subject to section 401(a)(11).

If the plan administrator chooses to use the sample language provided in an Appendix, the sample language should be conformed to the terms of the plan. The plan administrator should read the sample language carefully and select only those portions of the sample language that apply to the particular plan. For example, the sample language in Appendix A refers to certain optional forms of benefits under the plan, including a lump sum payment. If a plan administrator decides to include this sample language in the plan's spousal consent form, the sample language

should be compared to the optional forms of benefit payments available under the plan and modified, if necessary, to reflect the plan's optional forms. Further, spousal consent forms for some plans will need additional language discussing issues specific to the plan.

In order for a spouse's consent to be valid, the spousal consent form is not required to include the specific language contained in the Appendices. In all cases, however, spousal consent forms should be written clearly to ensure that the spouse both understands and acknowledges the effect of the participant's waiver of rights.

The Appendix provides sample language for incorporation in a spousal consent form only. The Appendix does not provide sample language for the explanation of the QJSA or QPSA that is required to be provided to the participant or the agreement in which the participant waives the QJSA or QPSA.

IV. COMMENTS

Notice 94-23, 1994-1 C.B. 340, requested comments from the public to aid in the development of additional guidance concerning spousal consent forms. The comments that were made in response to Notice 94-23 have been taken into consideration in drafting the sample language accompanying this Notice.

The Service invites the public to comment on the sample language accompanying this Notice as well as to suggest possible additional sample language. Comments can be addressed to CC:DOM:CORP:R (Notice 97-10), Room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 97-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at 'http://www.irs.ustreas.gov/prod/tax_regs/comments.html'.

DRAFTING INFORMATION

The principal authors of this Notice are Susan Lennon of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Steven Linder of the Employee Plans Division. For further information regarding this Notice, please contact the Employee Plans Division's taxpayer assis-

tance telephone service at (202) 622-6074/6075, between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday. Alternatively, please call Ms. Lennon at (202) 622-4606 or Mr. Linder at (202) 622-6214. These telephone numbers are not toll-free.

APPENDIX A

SAMPLE LANGUAGE THAT MAY BE INCLUDED IN A SPOUSE'S AGREEMENT TO GIVE UP THE RIGHT TO THE QUALIFIED JOINT AND SURVIVOR ANNUITY (UNDER A DEFINED BENEFIT PLAN OR A DEFINED CONTRIBUTION PLAN)

Instruction: The sample language does not address the one-year-of-marriage rule under section 417(d); if a plan applies the one-year rule, the sample language should be modified to explain this rule.

The sample language contains language in brackets that pertains to a participant's selection of a non-spouse beneficiary to receive death benefits. The bracketed language should be deleted if the plan provides death benefits only to the participant's surviving spouse.

1. What is a Qualified Joint and Survivor Annuity (QJSA)?

Federal law requires the (name of plan) to pay retirement benefits in a special payment form unless your spouse chooses a different payment form and you agree to that choice. This special payment form is often called a "qualified joint and survivor annuity" or "QJSA" payment form. The QJSA payment form gives your spouse a (insert period of QJSA payment, e.g., monthly) retirement payment for the rest of his or her life. This is often called an "annuity." Under the QJSA payment form, after your spouse dies, each (insert period of QJSA payment, e.g., month) the plan will pay you (insert survivor percentage for the QJSA form under the plan) percent of the retirement benefit that was paid to your spouse. The benefit paid to you after your spouse dies is often called a "survivor annuity" or a "survivor benefit." You will receive this survivor benefit for the rest of your life.

Example

Pat Doe and Pat's spouse, Robin, receive payments from the plan under the QJSA payment form. Beginning after Pat retires, Pat receives \$600 each month from the plan. Pat then dies. The plan will pay Robin \$(insert ap-

licable dollar amount for the QJSA) a month for the rest of Robin's life.

2. How Can Your Spouse Change the Way Benefits Are Paid?

Your spouse and you will receive benefits from the plan in the special QJSA payment form required by federal law unless your spouse chooses a different payment form and you agree to the choice. If you agree to change the way the plan's retirement benefits are paid, you give up your right to the special QJSA payments.

3. Do You Have to Give Up Your Right to the QJSA Benefit?

Your choice must be voluntary. It is your personal decision whether you want to give up your right to the special QJSA payment form.

4. What Other Benefit Forms Can My Spouse Choose?

Instruction: The plan administrator may make additions to the paragraph below to explain the plan's optional forms of benefits. For example, the plan administrator could list all optional forms of benefits or provide a cross-reference to a description of benefit options provided to participants. The examples following the paragraph are common optional forms of benefits. The examples should be modified to be consistent with the plan's optional forms of benefits. The plan administrator may give additional examples to explain other available optional forms.

If you agree, your spouse can choose to have the retirement benefits paid in a different form. Other payment forms may give your spouse larger retirement benefits while he or she is alive, but might not pay you any benefits after your spouse dies.

Example of Single Life Annuity Payment Form

If Pat and Robin Doe receive retirement benefits in the special QJSA payment form, Pat would receive retirement benefits of \$600 each month from the plan until Pat dies and Robin would receive \$(insert applicable dollar amount for the QJSA) a month for the rest of Robin's life. Pat and Robin Doe agree not to receive retirement benefits in the special QJSA payment form and decide instead to receive payments only during Pat's life. After Pat retires, Pat will receive more than \$600 each month from the plan until Pat's death. Robin

will not receive any payments from the plan after Pat's death.

Example of Lump Sum Payment Form

Pat and Robin Doe agree not to receive the special QJSA payments and decide instead that Pat will receive a single payment equal to the value of all of Pat's retirement benefits. In this case, no further payments will be made to Pat or Robin.

[If you agree, your spouse can name someone other than you to receive all or a part of the survivor benefits from the plan after your spouse dies. The person your spouse selects to receive all or part of the survivor benefits is often called a "beneficiary." If you agree to let your spouse name someone else as the beneficiary for all of the survivor benefits, you will not receive any payments from the plan after your spouse dies. If you agree to let your spouse name someone else as the beneficiary for a part of the survivor benefits, your survivor benefits will be less than you would have received under the special QJSA payment form.

Example of Naming a Beneficiary Who Is Not the Spouse

Pat and Robin Doe select a payment form that has a survivor benefit of \$200 a month payable after Pat dies. Pat and Robin agree that 1/2 of the survivor benefit will be paid to Robin and 1/2 will be paid to Pat and Robin's child, Chris. After Pat dies, the plan will pay \$100 a month to Robin for the rest of Robin's life. Chris will also receive payments from the plan as long as Chris lives. Chris will receive less than \$100 a month because Chris, being younger than Robin, is expected to receive payments over a longer period.]

5. Can Your Spouse Make Future Changes if You Sign this Agreement?

Instruction: The plan administrator should select Option A if the agreement is a "specific consent," that is, the spouse agrees to the participant's choice of a particular form of benefit and beneficiary. The plan administrator should select Option B if the agreement is a "general consent," that is, the spouse agrees to allow the participant to choose any form of benefit and any beneficiary without telling the spouse the selection.

Option A

If you sign this agreement, you agree that benefits under the plan will be paid in the form stated in this agreement. [You also agree that the beneficiary named in this agreement will receive all or a part of the survivor benefits from the plan after your spouse has died]. Your spouse cannot change the payment form [or the beneficiary] unless you agree to the change by signing a new agreement. However, your spouse can change to the special QJSA payment form without getting your agreement.

Option B

If you sign this agreement, you agree that your spouse can choose the form of payments that he or she will receive from the plan without telling you and without getting your agreement. [Your spouse can also choose the beneficiary who will receive any survivor benefits from the plan after your spouse dies without telling you and without getting your agreement.] Your spouse does not need to tell you or get your agreement to any future changes in the form of payments [or the beneficiary].

You may limit your agreement to a particular payment form [and a particular beneficiary]. If you want to allow your spouse to select only a particular payment form [and a particular beneficiary], do not sign this form. In that case, contact the plan administrator for more information and to get a new agreement that lets you state the particular payment form [and the particular beneficiary] that you will allow your spouse to select.

6. Can You Change Your Mind After You Sign this Agreement?

Instruction: The plan administrator should select Option A if the plan does not allow a spouse to revoke his or her consent. The plan administrator should select Option B if the plan allows a spouse to revoke his or her consent. The language in double brackets in Options A and B applies only to general consent forms. For an explanation of a specific consent and a general consent, see the Instruction to section 5.

Option A

You cannot change this agreement after you sign it. Your decision is final [even if your spouse later chooses a different type of retirement benefit or beneficiary].

Option B

You can change this agreement until (date). After that date, you cannot change the agreement [even if your spouse later chooses a different type of retirement benefit or beneficiary]. If you change your mind, you must notify the plan administrator by (insert the plan procedure for revoking consent) .

7. What Happens to this Agreement if You Become Separated or Divorced?

Legal separation or divorce may end your right to survivor benefits from the plan even if you do not sign this agreement. However, if you become legally separated or divorced, you might be able to get a special court order (which is called a qualified domestic relations order or "QDRO") that would give you rights to receive retirement benefits even if you sign this agreement. If you are thinking about separating or getting a divorce, you should get legal advice on your rights to benefits from the plan.

8. What Should You Know Before Signing this Agreement?

Instruction: The plan administrator should modify the language below to reflect the plan's administrative procedures and insert the appropriate address or telephone number.

This is a very important decision. You should think very carefully about whether you want to sign this agreement. Before signing, be sure that you understand what retirement benefits you may get and what benefits you will no longer be able to receive.

Your spouse should have received information on the types of retirement benefits available from the plan. If you have not seen this information, you should get it and read it before you sign this agreement. For additional information, you can contact (name of person or department, such as the Human Resources Department) at the following address (or telephone number).

9. Your Agreement

Instruction: The plan administrator should select Option A if the agreement is a specific consent. The plan administrator should select Option B if the agreement is a general consent. For an explanation of a specific consent and a general consent, see the Instruction to section 5.

Option A

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have the right to have (name of plan) pay my spouse's retirement benefits in the special QJSA payment form and I agree to give up that right. I understand that by signing this agreement, I may receive less money than I would have received under the special QJSA payment form and I may receive nothing after my spouse dies, depending on the payment form [or beneficiary] that my spouse chooses.

I agree that my spouse can receive retirement benefits in the form of a (insert form of benefit selected). [I also agree to my spouse's choice of (name of beneficiary) as the beneficiary who will receive (insert percentage of survivor benefit that will be paid to the beneficiary) of the survivor benefits from the plan after my spouse dies.] I understand that my spouse cannot choose a different form of retirement benefits [or a different beneficiary] unless I agree to the change.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then my spouse and I will receive payments from the plan in the special QJSA payment form.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Option B

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have the right to have (name of plan) pay my spouse's retirement benefits in the special QJSA payment form, and I agree to give up that right. I understand that by signing this agreement, I may receive less money than I would have received under the special QJSA payment form and I may receive nothing after my spouse dies depending on the payment form [or beneficiary] that my spouse chooses.

I understand that by signing this agreement, my spouse can choose any retirement benefit form [and any beneficiary] that is allowed by the plan without telling me and without getting my agreement. I also understand that my spouse can change the retirement benefit form selected [or the name of a beneficiary] at any time before retirement

benefits begin without telling me and without getting my agreement.

I understand that I can limit my spouse's choice to a particular retirement benefit form [and a particular beneficiary who will receive payments from the plan after the death of my spouse] and that I am giving up that right.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then my spouse and I will receive payments from the plan in the special QJSA payment form.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

APPENDIX B

SAMPLE LANGUAGE THAT MAY BE INCLUDED IN A SPOUSE'S AGREEMENT TO GIVE UP THE RIGHT TO THE QUALIFIED PRERETIREMENT SURVIVOR ANNUITY UNDER A DEFINED BENEFIT PLAN

Instruction: The sample language does not address the one-year-of-marriage rule under section 417(d); if a plan applies the one-year rule, the sample language should be modified to explain this rule.

1. What is a Qualified Preretirement Survivor Annuity (QPSA)?

Instruction: The final sentence in the sample language before the example addresses situations where a plan pays the survivor benefit in a lump sum if the value of the survivor benefit is \$3,500 or less. That sentence should be deleted if the plan pays survivor benefits with a value of \$3,500 or less as an annuity.

Federal law gives you the right to receive a special death benefit from (name of plan) if your spouse dies before you, unless your spouse chooses to give up this benefit and you agree to that choice. You have this right if your spouse has earned retirement benefits under the plan and dies before he or she begins receiving those benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). You have the right to receive this special (insert period of QPSA payment, e.g., monthly) death benefit for

the rest of your life beginning no later than when your spouse could have begun receiving retirement benefits. The special death benefit is (insert a percentage that is no less than the survivor percentage for the QJSA form under the plan) percent of the retirement benefit your spouse earns before death. The special death benefit is often called a "qualified preretirement survivor annuity" or "QPSA" benefit. (The plan will pay this death benefit in a lump sum, rather than as a QPSA, if the value of the death benefit is \$3,500 or less.)

Example

Pat Doe dies at age 45 after earning a retirement benefit. The value of Pat's death benefit is more than \$3,500. If Pat had lived, Pat could have retired and begun receiving payments as early as age 55 under the plan's terms. The plan will pay a monthly benefit to Pat's spouse, Robin Doe, for the rest of Robin's life. Robin has the right to begin receiving the benefit no later than when Pat would have been 55 years old.

There is a cost for the QPSA benefit. Your spouse's retirement benefits will be reduced for this cost.

Instruction: The paragraph above should be deleted if the plan does not reduce a participant's benefit because of the QPSA coverage and does not impose a charge for the QPSA. If the plan imposes the QPSA charge other than by reducing the participant's retirement benefit, this paragraph should be modified accordingly.

2. What Are Your Rights if You Sign this Agreement?

Your right to the QPSA benefit provided by federal law cannot be taken away unless you agree to give up that benefit.

Instruction: The plan administrator should select Option A if the agreement is intended to waive the QPSA in a plan that imposes a charge for the QPSA. The plan administrator should select Option B if the participant's spouse is agreeing to allow someone else to receive any death benefits, regardless of whether the plan imposes a charge for the QPSA.

Option A

If you sign this agreement, you will not receive the QPSA benefit and your spouse's retirement benefits will not be reduced for the cost of the QPSA benefit you give up.

Option B

You can agree to give up all or part of the QPSA benefit. If you agree to give up all of the QPSA benefit, the plan will pay this benefit to another person selected by your spouse. The person your spouse selects to receive this benefit is often called a “beneficiary”. If you agree to give up part of the QPSA benefit, that part will be paid to the beneficiary named by your spouse, and you will receive the rest of the QPSA benefit. For example, if you agree, your spouse can have the death benefits paid to his or her children instead of you.

Example of Naming a Beneficiary Who is Not the Spouse

Pat and Robin Doe agree that Robin will not receive the QPSA benefit. Pat and Robin also decide that 1/2 of the death benefits under the plan will be paid to Robin and 1/2 of the death benefits will be paid to Pat and Robin’s child, Chris. The total death benefits are \$200 per month. After Pat dies, the plan will pay \$100 a month to Robin for the rest of Robin’s life. Chris will also receive payments from the plan as long as Chris lives. Chris will receive less than \$100 a month because Chris, being younger than Robin, is expected to receive payments over a longer period.

3. Do You Have to Give Up Your Right to the QPSA Benefit?

Your choice must be voluntary. It is your personal decision whether you want to give up your right to the QPSA benefit.

4. Can Your Spouse Make Future Changes if You Sign this Agreement?

Instruction: Option A is for use if the plan does not allow a non-spouse beneficiary to receive death benefits. Option B is for use in a “specific consent agreement,” that is, where the spouse agrees to the participant’s waiver of the QPSA and to the participant’s choice of a specific beneficiary to receive death benefits. Option C is for use in a “general consent agreement,” that is, where the spouse agrees to the participant’s waiver of the QPSA and to allow the participant to select any other beneficiary to receive the death benefits.

Option A

Even if you sign this agreement, your spouse can later select the QPSA benefit for you without having you sign a new agreement.

Option B

If you sign this agreement, your spouse cannot change the beneficiary named in this agreement unless you agree to the new beneficiary by signing a new agreement. If you agree, your spouse can change the beneficiary at any time before your spouse begins receiving benefits or dies. You do not have to agree to let your spouse change the beneficiary. However, your spouse can later select the QPSA benefit for you without having you sign a new agreement.

Option C

If you sign this agreement, your spouse can choose the beneficiary who will receive the QPSA benefit without telling you and without getting your agreement. Your spouse can change the beneficiary at any time before your spouse begins receiving benefits or dies.

You have the right to agree to allow your spouse to select only a particular beneficiary. If you want to allow your spouse to select only a particular beneficiary, do not sign this form. In that case, contact the plan administrator for more information and to get a new agreement that lets you state the particular beneficiary that you will allow your spouse to select.

5. Can You Change Your Mind After You Sign this Agreement?

Instruction: The plan administrator should select Option A if the plan does not allow a spouse to revoke his or her consent. The plan administrator should select Option B if the plan allows a spouse to revoke his or her consent. The bracketed language in Options A and B applies only to general consent forms. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

Option A

You cannot change this agreement after you sign it. Your decision is final [even if your spouse later chooses a different beneficiary].

Option B

You can change this agreement until (date). After that date, you cannot change the agreement [even if your

spouse later chooses a different beneficiary]. If you change your mind, you must notify the plan administrator by (the plan procedure for revoking consent).

6. What Happens to this Agreement if You Become Separated or Divorced?

You may lose your right to the QPSA benefit if your spouse and you become legally separated or divorced, even if you do not sign this agreement. However, if you become legally separated or divorced, you might be able to get a special court order (which is called a qualified domestic relations order or “QDRO”) that specifically protects your rights to receive the QPSA benefit or that gives you other benefits under this plan. If you are thinking about separating or getting a divorce, you should get legal advice on your rights to benefits from the plan.

7. Your Agreement

Instruction: The plan administrator should select Option A if the agreement is a waiver of the QPSA and the plan does not allow a non-spouse beneficiary to receive a QPSA benefit. The plan administrator should select Option B if the agreement is a specific consent to have a different beneficiary receive a QPSA benefit. The plan administrator should select Option C if the agreement is a general consent to have any beneficiary chosen by the participant receive a QPSA benefit. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

The final sentence in the first and last paragraphs of the sample language in this section address situations where a plan pays the survivor benefit in a lump sum if the value of the death benefit is \$3,500 or less. These sentences should be deleted if the plan pays death benefits with a value of \$3,500 or less as an annuity.

Option A

I, (name of participant’s spouse), am the spouse of (name of participant). I understand that I have a right to the QPSA benefit from (name of plan) if my spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less,

the plan will pay the benefit to me in one lump sum payment.

I agree to give up my right to the QPSA benefits.

I understand that by signing this agreement, I may receive less money than I would have received under the special QPSA payment form and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive the QPSA benefit if my spouse dies before he or she begins to receive retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Option B

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have a right to the QPSA benefit from (name of plan) if my spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

I agree to give up my right to (insert percentage) percent of the QPSA benefit and instead to have that benefit paid to the following beneficiaries:

Name of Beneficiary	Percent of QPSA
_____	_____
_____	_____
_____	_____

I understand that my spouse cannot select a different beneficiary unless I agree to the change.

I understand that by signing this agreement, I may receive less money than I would have received under the special QPSA payment form and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive the QPSA benefit if my spouse dies before he or she begins to receive retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Option C

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have a right to the QPSA benefit from (name of plan) if my spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

I agree to give up my right to (insert percentage) percent of the QPSA benefit and to allow my spouse to choose any beneficiary to receive that benefit. I understand by signing this agreement, my spouse can choose the beneficiary without telling me and without getting my agreement. I also understand that my spouse can change the beneficiary at any time before retirement benefits begin without telling me and without getting my agreement.

I understand that I can limit my spouse's choice to a particular beneficiary who will receive payments from the plan after the death of my spouse and that I am giving up that right.

I understand that by signing this agreement, I may receive less money than I would have received under the special QPSA payment form and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive the QPSA benefit from the plan if my spouse dies before he or she begins to receive retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also

understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Note to plan administrator: A participant in a plan subject to the survivor annuity requirements of section 401(a)(11) generally may waive the QPSA benefit with spousal consent only on or after the first day of the plan year in which the participant attains age 35. However, a plan may provide for an earlier waiver with spousal consent, provided that a written explanation of the QPSA is given to the participant and that the waiver executed prior to age 35 becomes invalid upon the beginning of the plan year in which the participant's thirty-fifth birthday occurs. If a new waiver and spousal consent is not executed on or after that date, the QPSA benefit must be provided.

APPENDIX C

SAMPLE LANGUAGE THAT MAY BE INCLUDED IN A SPOUSE'S AGREEMENT TO GIVE UP THE RIGHT TO A QUALIFIED PRERETIREMENT SURVIVOR ANNUITY WITH RESPECT TO A PARTICIPANT IN A DEFINED CONTRIBUTION PLAN TO THE EXTENT THE PLAN IS SUBJECT TO SECTION 401(a)(11)

Instruction: The sample language does not address the one-year-of-marriage rule under section 417(d); if a plan applies the one-year rule, the sample language should be modified to explain this rule.

1. What is a Qualified Preretirement Survivor Annuity (QPSA)?

Instruction: The final sentence of the sample language before the example addresses situations where a plan pays the survivor benefit in a lump sum if the value of the survivor benefit is \$3,500 or less. That sentence should be deleted if the plan pays survivor benefits with a value of \$3,500 or less as an annuity.

Your spouse has an account in (name of plan). The money in the account that

your spouse will be entitled to receive is called the vested account. Federal law states that you will receive a special death benefit that is paid from the vested account if your spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). You have the right to receive this *(insert period of QPSA payment, e.g., monthly)* payment for your life beginning after your spouse dies. The special death benefit is often called a “qualified preretirement survivor annuity” or “QPSA” benefit. (The plan will pay this death benefit in a lump sum, rather than as a QPSA, if the value of the death benefit is \$3,500 or less.)

2. Can Your Spouse Choose Other Beneficiaries to Receive the Account?

Your right to the QPSA benefit provided by federal law cannot be taken away unless you agree to give up that benefit. If you agree, your spouse can choose to have all or a part of the death benefits paid to someone else. The person your spouse chooses to receive the death benefits is usually called the “beneficiary.” For example, if you agree, your spouse can have the death benefits paid to his or her children instead of you.

Example

Pat and Robin Doe agree that Robin will not receive the QPSA benefit. Pat and Robin also decide that 1/2 of the death benefits that are paid from Pat’s vested account will be paid to Robin and 1/2 of the death benefits will be paid to Pat and Robin’s child, Chris. The total death benefits are \$200 per month. After Pat dies, the plan will pay \$100 a month to Robin for the rest of Robin’s life. Chris will also receive payments from the plan as long as Chris lives. Chris will receive less than \$100 a month because Chris, being younger than Robin, is expected to receive payments over a longer period.

3. Do You Have to Give Up Your Right to the QPSA Benefit?

Your choice must be voluntary. It is your personal decision whether you want to give up your right to the special QPSA payment form.

4. Can Your Spouse Change the Beneficiary in the Future if You Sign this Agreement?

Instruction: Option A is for use in a “specific consent agreement,” that is, where the spouse agrees to the participant’s waiver of the QPSA and to the participant’s choice of a specific beneficiary to receive death benefits. Option B is for use in a “general consent agreement,” that is, where the spouse agrees to the participant’s waiver of the QPSA and to allow the participant to select any other beneficiary to receive the death benefits.

Option A

If you sign this agreement, your spouse cannot change the beneficiary named in this agreement unless you agree to the new beneficiary by signing a new agreement. If you agree, your spouse can change the beneficiary at any time before your spouse begins receiving benefits or dies. You do not have to agree to let your spouse change the beneficiary. However, your spouse can select the QPSA benefit for you without getting your agreement.

Option B

If you sign this agreement, your spouse can choose the beneficiary who will receive the death benefits without telling you and without getting your agreement. Your spouse can change the beneficiary at any time before he or she begins receiving benefits or dies.

You have the right to agree to allow your spouse to select only a particular beneficiary. If you want to allow your spouse to select only a particular beneficiary, do not sign this form. In that case, contact the plan administrator for more information and to get a new agreement that lets you state the particular beneficiary that you will allow your spouse to select.

5. Can You Change Your Mind After You Sign this Agreement?

Instruction: The plan administrator should select Option A if the plan does not allow a spouse to revoke his or her consent. The plan administrator should select Option B if the plan allows a spouse to revoke his or her consent. The bracketed language in Options A and B applies only to general consent forms. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

Option A

You cannot change this agreement after you sign it. Your decision is final [even if your spouse later chooses a different beneficiary].

Option B

You can change this agreement until *(date)*. After that date, you cannot change the agreement [even if your spouse later chooses a different beneficiary]. If you change your mind, you must notify the plan administrator by *(the plan procedure for revoking consent)*.

6. What Happens to this Agreement if You Become Separated or Divorced?

You may lose your right to the QPSA benefit if your spouse and you become legally separated or divorced even if you do not sign this agreement. However, if you become legally separated or divorced, you might be able to get a special court order (which is called a qualified domestic relations order or “QDRO”) that specifically protects your rights to receive the QPSA benefit or that gives you other benefits under this plan. If you are thinking about separating or getting a divorce, you should get legal advice on your rights to benefits from the plan.

7. Your Agreement

Instruction: The plan administrator should select Option A if the agreement is a specific consent. The plan administrator should select Option B if the agreement is a general consent. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

The final sentence in the first and last paragraphs of the sample language in this section address situations where a plan pays the survivor benefit in a lump sum if the value of the death benefit is \$3,500 or less. These sentences should be deleted if the plan pays death benefits with a value of \$3,500 or less as an annuity.

Option A

I, *(name of participant’s spouse)*, am the spouse of *(name of participant)*. I understand that I have a right to the QPSA benefit from *(name of plan)* if my spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

I agree to give up my right to *(insert percentage)* percent of the QPSA benefit and instead to have that benefit paid to the following beneficiaries:

Name of Beneficiary	Percent of QPSA
_____	_____
_____	_____
_____	_____

I understand that my spouse cannot select a different beneficiary unless I agree to the change.

I understand that by signing this agreement, I may receive less money than I would have received under the special QPSA payment form and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive the QPSA benefit if my spouse dies before he or she begins to receive retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Option B

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have a right to the QPSA benefit from (name of plan) if my spouse dies before he or she begins receiving retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

I agree to give up my right to (insert percentage) percent of the QPSA benefit and to allow my spouse to choose any beneficiary to receive that benefit. I understand that by signing this agreement, my spouse can choose the beneficiary without telling me and without getting my agreement. I also understand that my spouse can change the beneficiary at any time before retirement benefits begin without telling me and without getting my agreement.

I understand that I can limit my spouse's choice to a particular beneficiary who will receive payments from the plan after the death of my spouse and that I am giving up that right.

I understand that by signing this agreement, I may receive less money than I would have received under the special QPSA payment form and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive the QPSA benefit if my spouse dies before he or she begins to receive retirement benefits (or, if earlier, before the beginning of the period for which the retirement benefits are paid). I also understand that if the value of the QPSA benefit is \$3,500 or less, the plan will pay the benefit to me in one lump sum payment.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Note to plan administrator: A participant in a plan subject to the survivor annuity requirements of section 401(a)(11) generally may waive the QPSA benefit with spousal consent only on or after the first day of the plan year in which the participant attains age 35. However, a plan may provide for an earlier waiver with spousal consent, provided that a written explanation of the QPSA is given to the participant and that the waiver executed prior to age 35 becomes invalid upon the beginning of the plan year in which the participant's thirty-fifth birthday occurs. If a new waiver and spousal consent is not executed on or after that date, QPSA benefit must be provided.

**APPENDIX D
SAMPLE LANGUAGE THAT MAY BE INCLUDED IN A SPOUSE'S AGREEMENT TO GIVE UP THE RIGHT TO BE THE BENEFICIARY OF A PARTICIPANT IN A DEFINED CONTRIBUTION PLAN TO THE EXTENT THE PLAN IS NOT SUBJECT TO SECTION 401(a)(11)**

Instruction: The sample language does not address the one-year-of-marriage rule under section 417(d); if a plan applies the one-year rule, the sample language should be modified to explain this rule.

1. What Rights Do You Have to Benefits After Your Spouse Dies?

Your spouse has an account in (name of plan). The money in the account that your spouse will be entitled to receive is called the vested account. Federal law states that you will receive the vested account after your spouse dies.

Example

Pat Doe dies at age 45 and Pat's vested account in the (name of plan) was \$10,000 at the time of Pat's death. The plan will pay the \$10,000 to Pat's spouse, Robin Doe (adjusted for gains and losses after Pat's death).

2. Can Your Spouse Choose Other Beneficiaries to Receive the Account?

Your right to your spouse's vested account provided by federal law cannot be taken away unless you agree. If you agree, your spouse can elect to have all or part of the vested account paid to someone else. Each person your spouse chooses to receive a part of the vested account is called a "beneficiary." For example, if you agree, your spouse can have the vested account paid to his or her children instead of you.

Example

Pat and Robin Doe agree that 1/2 of the Pat's vested account will be paid to Robin and 1/2 of the vested account will be paid to Pat's child, Chris. If Pat's vested account at the time of his death is \$10,000, the plan will pay \$5,000 to Robin and \$5,000 to Chris (each amount adjusted for gains and losses after Pat's death).

Your spouse cannot have the vested account paid to someone else unless you agree and sign this agreement.

3. Do You Have to Give Up Your Right to Your Spouse's Vested Account?

Your choice must be voluntary. It is your personal decision whether you want to give up your right to your spouse's vested account.

4. Can Your Spouse Change the Beneficiary in the Future if You Sign this Agreement?

Instruction: The plan administrator should select Option A if the agreement is a "specific consent," that is, where the spouse agrees to the beneficiary selected by the participant. The plan administrator should select Option B if the agreement is a "general consent," that is, where the spouse agrees to allow the participant to select any beneficiary even if the spouse does not know the identity of the beneficiary.

Option A

If you sign this agreement, your spouse cannot change the beneficiary named in this agreement to anyone other than you, unless you agree to the new beneficiary by signing a new agreement. If you agree, your spouse can change the beneficiary at any time before your spouse dies.

Option B

If you sign this agreement, your spouse can choose the beneficiary who will receive all or part of the vested account without telling you and without getting your agreement. Your spouse can change the beneficiary at any time before the account is paid out.

You have the right to agree to allow your spouse to select only a particular beneficiary. If you want to allow your spouse to select only a particular beneficiary, do not sign this form. In that case, contact the plan administrator for more information and to get a new agreement that lets you state the particular beneficiary that you will allow your spouse to select.

5. Can You Change Your Mind After You Sign this Agreement?

Instruction: The plan administrator should select Option A if the plan does not allow a spouse to revoke his or her consent. The plan administrator should select Option B if the plan allows a spouse to revoke his or her consent. The bracketed language in Options A and B applies only to general consent forms. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

Option A

You cannot change this agreement after you sign it. Your decision is final [even if your spouse later chooses a different beneficiary].

Option B

You can change this agreement until (date). After that date, you cannot change the agreement [even if your spouse later chooses a different beneficiary]. If you change your mind, you must notify the plan administrator by (insert the plan procedure for revoking consent). The plan administrator must receive this information before (date).

6. What Happens to this Agreement if You Become Separated or Divorced?

Legal separation or divorce may end your right to the vested account even if you do not sign this agreement. How-

ever, if you become legally separated or divorced, you might be able to get a special court order (which is called a qualified domestic relations order or "QDRO") that specifically protects your rights to the vested account. If you are thinking about separating or getting a divorce, you should get legal advice on your rights to benefits from the plan.

7. Your Agreement

Instruction: The plan administrator should select Option A if the agreement is a specific consent. The plan administrator should select Option B if the agreement is a general consent. For an explanation of a specific consent and a general consent, see the Instruction to section 4.

Option A

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have the right to all of my spouse's vested account in the (name of plan) after my spouse dies. I agree to give up the right to (insert percentage) of the account and to have that amount paid to the following beneficiaries:

Name of Beneficiary	Percent of QPSA
_____	_____
_____	_____
_____	_____

I understand that my spouse cannot change the name of any beneficiary in the future unless I agree to the change.

I understand that by signing this agreement, I may receive less money than I would have received if I had not signed this agreement and I may receive nothing from the plan after my spouse dies.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive my spouse's vested account under the plan when my spouse dies.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.

Option B

I, (name of participant's spouse), am the spouse of (name of participant). I understand that I have the right to all of my spouse's vested account in the (name of plan) after my spouse dies.

I agree to give up (insert percentage) percent of the account and to have that amount paid to someone else as the beneficiary. I understand that by signing this agreement, my spouse can choose the beneficiary of the vested account without telling me and without getting my agreement. I also understand that by signing this agreement, my spouse can change the beneficiary of the vested account in the future without telling me and without getting my agreement again.

I understand that by signing this agreement, I may receive less money than I would have received if I had not signed this agreement and I may receive nothing from the plan after my spouse dies.

I understand that I can limit my spouse's choice to a particular beneficiary who will receive the vested account balance and that I am giving up that right.

I understand that I do not have to sign this agreement. I am signing this agreement voluntarily.

I understand that if I do not sign this agreement, then I will receive my spouse's account under the plan when my spouse dies.

Instruction: The plan administrator should add a line for the spouse's signature and a place for the witness' acknowledgment.
