



Sections 12(2)(d) & 11(2)(c)

Two Sides of the Same Coin



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Introduction

- Brief Summary of two of Chapter 32's beneficiary provisions:
 - Section 11
 - Section 12
- Review of Beneficiary Selection Forms for a Refund of Accumulated Total Deductions, and Option D.
- Hypotheticals showing the interplay between Sections 11 and 12.

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Two of Chapter 32's Key Beneficiary Provisions

Section 11

- Provides for disbursement of annuity account.
- Also prohibits disbursement of annuity account.
- Allows boards varying levels of flexibility in determining proper beneficiary or beneficiaries.

Section 12

- Describes how allowances are to be paid
- Options A, B, and C
- Option D: If certain circumstances are met, a lifetime allowance will be payable to a certain, named beneficiary if a member dies prior to retirement.
 - An eligible spouse can elect to receive the Option D, which will supersede the named beneficiary.
- The "Member Survivor Allowance"

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NOTES:

Two Sides of the Same Coin



Section 11(2)(C)

- Member dies prior to retirement.
- Will annuity account be paid out?
- If so, to whom?
- Payout of annuity account prevents an allowance being paid under Section 12.
- Death = Time of Stress.
- Forms on file can help families and retirement boards better navigate this trying time.

Section 12(2)(d)

- Member dies prior to retirement.
- Is someone entitled to a lifetime retirement allowance?
- An allowance being paid out under Section 12 prevents the payout of the annuity account.
- Loss of a loved one not the greatest time to work out any ambiguities which may exist.
- Forms on file make everything easier.

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Beneficiary Selection Forms

- 2 separate forms now.
- ***“Beneficiary Selection Form for Refund of Accumulated Deductions (If Member Dies Before Retirement)”***
 - Allows a member to select a beneficiary(ies) to receive payment of accumulated deductions and other payments if the member dies before retirement, pursuant to § 11(2)(c)
- ***“Beneficiary Selection Form – Option D (If Member Dies Before Retirement)”***
 - Allows a member to select an eligible beneficiary to receive an allowance if the member dies before retirement, pursuant to § 12(2)(d).
- Caveat: Only one will be paid out.

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Beneficiary Selection Form (Refund of Accumulated Deductions)

- ***“Beneficiary Selection Form for Refund of Accumulated Deductions (If Member Dies Before Retirement)”***
 - Member requests the retirement board to pay any sum referred to in § 11(2) due at his or her death to the following beneficiary(ies) in the proportions designated.
 - The accumulated deductions credited to the member’s account in the annuity savings fund at time of death.
 - The amount of any unpaid checks payable to the member at his or her death.

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Beneficiary Selection Form (Refund of Accumulated Deductions) <Continued>

- Any person(s) or entity(ies) may be a beneficiary under § 11(2).
 - Identify by name, address, SSN
 - Allocate a proportionate share
- States that the member’s selection may be superseded by a designated eligible beneficiary under § 12(2)(d).
- Also states that the member’s selection may be superseded by an eligible spouse under the provisions of Option D.
- Member signs the form, along with a disinterested witness.

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NOTES:

Beneficiary Selection Form (Choice of Option D Beneficiary)

- **“Beneficiary Selection Form – Option D (If Member Dies Before Retirement)”**
 - This form permits a member to nominate a beneficiary under § 12(2)(d).
 - Limited to a spouse, former spouse who has not remarried, child, parent, or sibling.
- Nominated beneficiary to receive a benefit equal to the Option (C) retirement allowance which would otherwise have been payable to the member in the event the member dies before retirement.
 - If under age 55 (or 60 if became a Group 1 member on/after 4/2/12), age factor is bumped up to the minimum. Same for the beneficiary’s age.
 - May change the beneficiary designation at any time prior to retirement.
 - The form becomes void upon retirement.

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Beneficiary Selection Form (Choice of Option D Beneficiary) <Continued>

- The member understands that the choice of a non-spouse Option D beneficiary can be superseded if, at the member’s death, the member has at least two years of creditable service and leaves a spouse:
 - To whom the member has been married for over one year;
 - With whom the member was living on the date of the member’s death or, if living apart;
 - For justifiable cause as determined by the retirement board.

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NOTES:

Beneficiary Selection Form (Choice of Option D Beneficiary) <Continued>

- Name the designated beneficiary.
- Identify the relationship to the member.
- Provide beneficiary's date of birth (with a birth record).
- Provide the beneficiary's SSN.
- Disinterested witness must sign and date.

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Fast Forward...

- Productive and long career as a public servant ... but die prior to retirement.
- What happens?
- Look to the Beneficiary Selection Forms.
 - Determine who was named as the Option D beneficiary.
 - Determine who was named as the beneficiary(ies) to receive a return of accumulated total deductions.
 - Determine whether the member was married (and further, whether they were married for more than one year and living together or living apart for potentially justifiable cause).

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NOTES:

Named Section 12(2)(d) Beneficiary

- Board must notify the nominated Option D beneficiary.
- Eligible for a lifetime allowance under § 12(2)(d).
- If the member was married to an eligible spouse, the Board must notify the spouse of his or her right to elect Option D benefits.
 - An eligible spouse has 90 days from the date notice is mailed to elect the Option D benefits. Must be on the form entitled “Notice of Election of Benefits (Option D),” which is a “prescribed form.”

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“Spousal Affidavit for Member Survivor Allowance”

- For a spouse seeking to elect benefits under § 12(2)(d), he or she must also file this affidavit.
- Provides important information to the Board to determine the spouse’s eligibility for and amount of survivor benefits.
 - Married and living with member on date of death?
 - If no, state why. Spouse must establish the fact that the separation was for a justifiable cause, other than the spouse’s desertion or moral turpitude.
 - Identify any children under age 18, or mentally/physically incapacitated, or full-time student under age 22.
- Spouse must file a copy of the marriage certificate and any birth certificates of children with the affidavit.

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What Happens If There Is No Eligible Option D Beneficiary?

- If the member did not name another individual as his/her Option D beneficiary, and there is no spousal election, the member's accumulated deductions would be paid to the surviving § 11(2) beneficiary(ies) of record, or, if there are none, to the member's surviving spouse in one sum.

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Withdrawal of Accumulated Total Deductions

- If the accumulated total deductions are being paid out, the beneficiary(ies) must complete the ***"Application for Withdrawal of Accumulated Total Deductions (Beneficiary)."***
- The beneficiary(ies) are entitled to either a direct rollover to an eligible account or a check of the funds minus 20% federal tax withholding.
- Each beneficiary is eligible for a different rollover:
 - Spouse: 401(a), 401(k), 403(b), 457(b), Roth IRA, or Simple IRA
 - Non-Spouse: Inherited IRA

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NOTES:

Hypothetical 1



Fact Pattern

- I name my wife Andrea my § 12(2)(d) beneficiary, and my § 11(2)(c) beneficiary.

Result

- Andrea must take the § 12(2)(d) benefit: she cannot choose the § 11(2)(c) benefit.
- This is because § 11(2)(c) forbids the release of the annuity account if there is a nominated, eligible Option D beneficiary.
 - (If you want your spouse to have the choice, don't nominate him/her as the Option D beneficiary once they are eligible to make the election after your death.)

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Hypothetical 2



Fact Pattern

- Never married.
- No kids.
- Named my brother Bert as my § 12(2)(d) beneficiary.
- Named my other brother Chris as my Beneficiary to Receive a Return of Accumulated Total Deductions - § 11(2).

Result

- Bert receives my § 12(2)(d) member-survivor allowance.
- Chris gets nothing.

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Hypothetical 3



Fact Pattern

- Never married.
- No kids.
- Named my brother Bert as my § 11(2)(c) beneficiary.
- Did not name a § 12(2)(d) beneficiary.
- Bert wants to choose the § 12(2)(d) benefit over the § 11(2)(c).

Result

- Bert is only eligible for the § 11(2)(c) benefit.
- For § 12(2)(d), the selection of a beneficiary must be on a “prescribed form:” that did not happen here.
- See *Coulter-Bennett v. State Bd. Of Ret.*, CR-20-149 (DALA) (Aug. 12, 2022)

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Hypothetical 4



Fact Pattern

- Never married.
- Named my two minor children Daisy and Emma as my § 11(2) beneficiaries (50% each).
- Named my brother Bert as my § 12(2)(d) beneficiary.

Result

- Bert receives my § 12(2)(d) member-survivor allowance.
 - Daisy and Emma would not receive a return of my accumulated deductions.
 - Pursuant to § 12B, the guardian for Daisy and Emma would receive \$120 and \$90, respectively, every month until they turn 18, or 22 if they are full-time students.

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Hypothetical 5



Fact Pattern

- Married to Andrea.
- Named my brother Bert as my § 12(2)(d) beneficiary.
- Named my other brother Chris as my § 11(2) beneficiary.

Result

- Andrea can supersede Bert and elect to be my § 12(2)(d) beneficiary, provided she can prove eligibility.
- If Andrea proves that she is eligible, Bert and Chris get nothing.
- If Andrea does not elect to be my § 12(2)(d) beneficiary, Bert gets the benefit.
- Chris gets nothing under either scenario.

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Hypothetical 6



Fact Pattern

- I am unmarried.
- I have two children, Daisy and Emma. I write Daisy's name in the one pre-printed section of the Option D Beneficiary Selection Form. But I also write Emma's name next to it.
- I die and both Daisy and Emma seek to split the Option D benefit.

Result

- Pursuant to § 12(2)(d), a member "may nominate an eligible beneficiary"
- No more than one beneficiary can be named the Option D beneficiary.
- Given that Daisy's name is listed in the appropriate section, she is likely the recipient.
- See *Cambridge R.B. v. PERAC*, CR-13-466 (DALA Feb. 22, 2019)

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NOTES:

Hypothetical 7



Fact Pattern

- I die with only three years of creditable service.
- Named my wife Andrea as my § 12(2)(d) beneficiary.
- I had two minor children, Daisy and Emma.

Result

- At a minimum, Andrea would receive \$500 per month under §12(2)(d) (assuming that the local option was accepted).
- Andrea would also receive \$120 a month for Daisy and \$90 a month for Emma pursuant to § 12B, until they turn 18, or 22 if they are full-time students.

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Hypothetical 8



Fact Pattern

- I never married and have no children.
- I die with only three years of creditable service.
- I name my brother Bert as my § 12(2)(d) beneficiary.

Result

- Bert receives my § 12(2)(d) benefit.
- Bert does not receive the minimum allowance, however.
 - The minimum allowance is only available to the surviving spouse of an active member (See *Barnstable Cty. R.B. v. PERAC*, CR-16-330 (DALA Jan. 25, 2019))
 - However, if the benefit is paid to a minor child pursuant to § 12B, the minor would be eligible for the minimum allowance

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Hypothetical 9



Fact Pattern

- Married to Andrea.
- No one named as my § 12(2)(d) beneficiary.
- Named my two brothers, Bert and Chris as my § 11(2) beneficiaries (50% each).

Result

- Andrea can elect to receive the § 12(2)(d) benefit.
- If Andrea does not elect, Bert and Chris split the return of accumulated total deductions - § 11(2).

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Hypothetical 10



Fact Pattern

- Named my ex-wife Andrea as my § 12(2)(d) beneficiary.
- Named my two brothers, Bert and Chris, as my § 11(2) beneficiaries (50% each).

Result

- If Andrea has not remarried, she receives the § 12(2)(d) benefit.
- If Andrea has remarried, she is not eligible for the § 12(2)(d) benefit, and Bert and Chris would evenly split the § 11(2) return of accumulated total deductions.
- NOTE: If Andrea did remarry, but subsequently gets divorced and is unmarried at the time of my death, she is not eligible for the § 12(2)(d) benefit.
 - *Mason v. Mass. Teachers Retirement System*, Case No. CR-16-0200 (CRAB) (Aug. 10, 2021) (aff'd by Superior Ct. 11/30/22)

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NOTES:

Hypothetical 11



Fact Pattern

- I die with no creditable service.
- My widowed wife Andrea contacts the Board and points out that I should have been made a member.
- The Board agrees that I should have been a member.

Result

- A beneficiary under § 12(2)(d) may make any payments which at the time of the member's death the member had a right to make for the purpose of obtaining credit for service rendered by the member (§ 12C) ... even when the "member" was erroneously denied membership (§ 20(5)(c)(1)).

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Hypothetical 12



Fact Pattern

- My wife Andrea divorces me.
- Pursuant to the DRO, I must name Andrea as my § 12(2)(d) beneficiary.
 - (eligible as long as she does not remarry)
- I do not name Andrea as my § 12(2)(d) beneficiary: I name my brother Bert.

Result

- Bert receives my § 12(2)(d) member-survivor allowance.
- Even though the DRO says that Andrea is to be the § 12(2)(d) beneficiary, a DRO is not a "prescribed form."
 - *Moore v. Boston R.B., and PERAC* (CR-12-73) (CRAB) (12/12/16)
- Possible remedy for Andrea in Family and Probate Court.

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NOTES:

Hypothetical 13



Fact Pattern

- I named my wife Andrea as my § 11(2)(c) beneficiary but did not name anyone as my § 12(2)(d) beneficiary.
- We do not divorce, but Andrea eventually moves out of our marital home.
- I have a minor child, Frank, from a previous marriage.

Result

- See *DeForitis v. Taunton R.B.*, CR-19-52 (DALA June 16, 2023)
 - In this particular fact pattern, Andrea and I were found to be living apart “by mutual consent” rather than for “justifiable cause.”
 - Even though we were still married, Andrea was not permitted to elect to receive the § 12(2)(d) benefit.
 - Frank was permitted to take the benefit pursuant to § 12B until such time as he reaches the age of majority.
 - Andrea doesn’t even get the § 11(2)(c).

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In Conclusion

- Death is a traumatic event: plan ahead and name a proper beneficiary(ies).
- Review and update the forms following any life changing event.
- Enjoy the rest of MACRS!

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NOTES:

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