

# ***QDROs***

## **The Division of Retirement Benefits Through Qualified Domestic Relations Orders**



**U.S. Department of Labor  
Employee Benefits Security Administration**

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# Chapter 2

## Administration of QDRO: Determining Qualified Status and Paying Benefits

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This chapter describes the duties of a plan administrator in determining the qualified status of domestic relations orders and administering distributions under QDROs. The following areas are addressed:

- ❑ What are the plan administrator's responsibilities in furnishing information to a participant and alternate payee?
- ❑ What measures must a plan administrator take to protect the plan participant's benefits upon receipt of a domestic relations order?
- ❑ What procedures must a plan administrator follow in determining whether a domestic relations order is a QDRO?

ERISA imposes a number of responsibilities on the plan administrator relating to the handling of domestic relations orders. As a plan fiduciary, the administrator is required to discharge these responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. It is the view of the Department that the prudent discharge of a fiduciary's responsibilities with respect to the handling of domestic relations orders, like other areas of plan administration, requires plan administrators to take steps to avoid unnecessary and excessive administrative burdens and costs to the plan. The Department believes that the adoption of procedures and policies designed to facilitate, rather than impede, the timely processing and perfection of domestic relations orders generally will serve to minimize plan burdens and costs attendant to QDRO determinations.

The following questions and answers are intended to provide guidance on the discharge of an administrator's obligations under the QDRO and fiduciary responsibility provisions of ERISA.

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**Q 2-1:      What information is an administrator required to provide a prospective alternate payee before the administrator receives a domestic relations order?**

Congress conditioned an alternate payee's right to an assignment of a participant's retirement benefit on the prospective alternate payee's obtaining a domestic relations order that satisfies specific informational and other requirements. It is the view of the Department that Congress therefore intended prospective alternate payees -- spouses, former spouses, children, and other dependents of a participant who are involved in a domestic relations proceeding -- to have access to plan and participant benefit information sufficient to prepare a QDRO. Such information might include the summary plan description, relevant plan documents, and a statement of the participant's benefit entitlements.

The Department believes that Congress did not intend to require prospective alternate payees to submit a domestic relations order to the plan as a prerequisite to establishing the prospective alternate payee's rights to information in connection with a domestic relations proceeding. However, it is the view of the Department that a plan administrator may condition disclosure of such information on a prospective alternate payee's providing information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations proceeding.

It is the Department's understanding that many domestic relations orders fail initially to qualify when submitted to the plan because they fail to take into account the plan's provisions or the participant's actual benefit entitlements. Affording prospective alternate payees access to plan and participant information in a timely manner will, in the view of the Department, help drafters avoid making such obvious errors in preparing orders and, thereby, facilitate plan administration. *See* Question 2-5.

[ERISA §§ 206(d)(3)(A) - (C), 404(a); IRC § 414(p)(1) - (3)]

**Q 2-2: What are the duties of a plan administrator upon receipt of a domestic relations order by the plan?**

Upon receipt of a domestic relations order, the plan administrator is required to promptly notify the affected participant and each alternate payee named in the order of the receipt of the order and to provide a copy of the plan's procedures for determining whether a domestic relations order is a QDRO. Notification should be sent to the address included in the domestic relations order.

The administrator is required to determine whether the order is a QDRO within a reasonable period of time after receipt of a domestic relations order and to promptly notify the participant and each alternate payee of such determination. *See* Question 2-10.

[ERISA § 206(d)(3)(G)(i); IRC § 414(p)(6)(A)]

**Q 2-3: Is a plan required to have procedures for determining whether a domestic relations order is qualified?**

Yes. Every retirement plan is required to establish written procedures for determining whether domestic relations orders are QDROs and for administering distributions under QDROs.

[ERISA § 206(d)(3)(G)(ii); IRC § 414(p)(6)(B)]

**Q 2-4: What requirements must a plan's QDRO procedures meet?**

The QDRO procedures must:

- ☐ be in writing;
- ☐ be reasonable;

- provide that each person specified in a domestic relations order received by the plan as entitled to payment of benefits under the plan will be notified (at the address specified in the domestic relations order) of the plan's procedures for making QDRO determinations upon receipt of a domestic relations order, and
- permit an alternate payee to designate a representative for receipt of copies of notices and plan information that are sent to the alternate payee with respect to a domestic relations order.

[ERISA § 206(d)(3)(G)(ii); IRC § 414(p)(6)]

**Q 2-5: Are there *other* matters that should be addressed in a plan's QDRO procedures?**

Yes. It is the view of the Department of Labor that a plan's QDRO procedures should be designed to ensure that QDRO determinations are made in a timely, efficient, and cost-effective manner, consistent with the administrator's fiduciary duties under ERISA. The Department believes that unnecessary administrative burdens and costs attendant to QDRO determinations and administration can be avoided with clear explanations of the plan's determination process, including:

- An explanation of the information about the plan and benefits that is available to assist prospective alternate payees in preparing QDROs, such as summary plan descriptions, plan documents, individual benefit and account statements, and any model QDROs developed for use by the plan (*see* Questions 2-1, 2-7);
- A description of any time limits set by the plan administrator for making determinations;
- A description of the steps the administrator will take to protect and preserve retirement assets or benefits upon receipt of a domestic relations order (for example, a description of when and under what

circumstances plan assets will be segregated or benefit payments will be delayed or suspended) (*See* Questions 2-12, 2-13) and

- A description of the process provided under the plan for obtaining a review of the administrator’s determination as to whether an order is a QDRO.

It is the view of the Department that the plan administrator’s adoption and use of clear QDRO procedures, coupled with the administrator’s provision of information about the plan and benefits upon request, will significantly reduce the difficulty and expense of obtaining and administering QDROs by minimizing confusion and uncertainty about the process.

[ERISA §§ 206(d)(3)(G), 206(d)(3)(H), 404(a); IRC §§ 414(p)(6), 414(p)(7)]

**Q 2-6: May a plan administrator charge a participant or alternate payee for determining the qualified status of a domestic relations order?**

The Department has taken the position that in the context of a defined contribution plan, an administrator may assess reasonable expenses attributable to a QDRO determination against the individual account of the participant who is a party to the domestic relations order. The documents of the plan should be reviewed to determine how plan expenses are allocated.

[ERISA § 404(a); see Field Assistance Bulletin 2003-3 (see Appendix A)]

**Q 2-7: May plan administrators provide parties with a model form or forms to assist in the preparation of a QDRO?**

Yes. Although they are not required to do so, plan administrators may develop and make available “model” QDRO forms to assist in the

preparation of a QDRO. Such model forms may make it easier for the parties to prepare a QDRO and reduce the time and expenses associated with a plan administrator's determination of the qualified status of an order. Examples of sample language that may be included in such forms are provided in Appendix C.

Plan administrators are required to honor any domestic relations order that satisfies the requirements to be a QDRO. In the view of the Department, therefore, a plan may not condition its determinations of QDRO status on the use of any particular form.

**Q 2-8: In determining the qualified status of a domestic relations order, is the administrator required to determine the validity of the order under state domestic relations law?**

No. A plan administrator is generally not required to determine whether the issuing court or agency had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an alternate payee is in fact a spouse, former spouse, child, or other dependent of the participant under state law.

[See Advisory Opinion 99-13A (Appendix A); Advisory Opinion 92-17A (Appendix A)]

**Q 2-9: Is a plan administrator required to reject a domestic relations order as defective if the order fails to specify factual identifying information that is easily obtainable by the plan administrator?**

No. In many cases, an order that is submitted to a plan may clearly describe the identity and rights of the parties, but may be incomplete only with respect to factual identifying information within the plan administrator's knowledge or easily obtained through a simple communication with the alternate payee or the participant. For example, an order may misstate the plan's name or the names of participants or alternate payees, and the plan administrator can clearly determine the correct names, or an order



may omit the addresses of participants or alternate payees, and the plan administrator's records include this information. In such a case, the plan administrator should supplement the order with the appropriate identifying information, rather than rejecting the order as not qualified.

[ERISA §§ 206(d)(3)(C), 206(d)(3)(I); IRC § 414(p)(2);  
*see* S. Rep. 575, 98th Cong., 2d Sess. at 20]

**Q 2-10:      How long may the plan administrator take to determine whether a domestic relations order is a QDRO?**

Plan administrators must determine whether a domestic relations order is a QDRO within a reasonable period of time after receiving the order. What is a reasonable period will depend on the specific circumstances. For example, a domestic relations order that is clear and complete when submitted should require less time to review than an order that is incomplete or unclear. *See* Question 2-12.

Plans are required to adopt reasonable procedures for determining the qualified status of domestic relations orders. Compliance with such procedures should ensure that determinations of the qualified status of an order take place within a reasonable period of time. Procedures that unduly inhibit or hamper the QDRO determination process will not be considered reasonable procedures. *See* Question 2-4.

[ERISA § 206(d)(3)(G)(i)(II); IRC § 414(p)(6)(A)(ii)]

**Q 2-11:      What must the plan administrator do during the determination process to protect against wrongly paying retirement benefits to the participant that would be paid to the alternate payee if the domestic relations order had been determined to be a QDRO?**

During any period in which the issue of whether a domestic relations order is a QDRO is being determined (by a plan administrator, by a court

of competent jurisdiction, or otherwise), ERISA requires that the plan administrator separately account for the amounts that would be payable to an alternate payee under the terms of the order during such period if the order had been determined to be qualified. These amounts are referred to as “segregated amounts.” During the period in which the status of a domestic relations order is being determined, the plan administrator must take steps to ensure that amounts that would have been payable to the alternate payee, if the order were a QDRO, are not distributed to the participant or any other person.

The plan administrator’s duty to separately account for and to preserve the segregated amounts is limited in time. ERISA provides that the plan administrator must preserve the segregated amounts for not longer than the end of an “18-month period.” This “18-month period” does not begin until the first date (after the plan receives the order) that the order would require payment to the alternate payee.

It is the view of the Department that, in order to ensure the availability of a full 18-month protection period, the 18 months cannot begin before the plan receives a domestic relations order. Rather, the “18-month period” will begin on the first date on which a payment would be required to be made under an order *following receipt by the plan*. See Questions 2-12 and 2-13, which discuss how benefits should be treated when determinations on qualified status are made either before or after the beginning of the “18-month period.”

[ERISA §§ 206(d)(3)(H), 404(a); IRC § 414(p)(7)]

**Q 2-12: What are an administrator’s duties with respect to a domestic relations order received by the plan before the beginning of the “18-month period”?**

As explained in Question 2-10, a plan administrator must determine whether a domestic relations order is a QDRO within a reasonable period following receipt. In the view of the Department, the “18-month

period” during which a plan administrator must preserve the “segregated amounts” (*see* Question 2-11) is not the measure of the reasonable period for determining the qualified status of an order and in most cases would be an unreasonably long period of time to take to review an order.

It is further the view of the Department that, during the determination period, the administrator, as a plan fiduciary, may not permit distributions to the participant or any other person of any amounts that would be payable to the alternate payee if the domestic relations order were determined to be a QDRO. If the domestic relations order is determined to be a QDRO before the first date on which benefits are payable to the alternate payee, the plan administrator has a continuing duty to account for and to protect the alternate payee’s interest in the plan to the same extent that the plan administrator is obliged to account for and to protect the interests of the plan’s participants. The plan administrator also has a fiduciary duty to pay out benefits in accordance with the terms of the QDRO.

The Department understands that orders that are initially rejected by the plan administrator as not qualified are frequently revised and resubmitted within a short period of time. The Department also recognizes that in some instances plan administrators who reject an order may receive requests from participants for immediate distribution of benefits under circumstances that suggest that the rejected order is being revised and will shortly be resubmitted to the plan. In such circumstances, the plan administrator may be subject to conflicting claims for either paying the benefit or failing to pay the benefit. The Department suggests that plan administrators may wish to consider the establishment of a process for providing preliminary or interim review of orders, and postponing final determinations for limited periods, to permit parties to correct defects within the 18-month segregation period. Such a process would reduce the likelihood of conflicting claims.

[ERISA §§ 206(d)(3)(H), 404(a)]

**Q 2-13: What are an administrator's duties with respect to a domestic relations order received on or after the date on which benefits would be payable to an alternate payee under the order?**

Upon receipt of a domestic relations order, the administrator must separately account for and preserve the amounts that would be payable to an alternate payee until a determination is made with respect to the status of the order. *See* Questions 2-11, 2-12. If, within the "18-month period" -- beginning with the date (after receipt of the order by the plan) on which the first payment would be required to be made to an alternate payee under the order -- the plan administrator determines that the order is a QDRO, the plan administrator must pay the segregated amounts to the alternate payee in accordance with the terms of the QDRO. If, however, the plan administrator determines within the "18-month period" that the order is not a QDRO, or if the status of the order is not resolved by the end of the "18-month period," the plan administrator must pay out the segregated amounts to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the alternate payee will be entitled only to amounts payable under the order after the subsequent determination. *See* Question 2-12.

[ERISA §§ 206(d)(3)(H), 404(a); IRC § 414(p)(7); *but see* H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-858 (describing 1986 amendments to the Retirement Equity Act of 1984, including clarification of the procedures to be followed during the 18-month segregation period for QDRO determinations)]

**Q 2-14: What kind of notice is required to be provided by a plan administrator following a QDRO determination?**

The plan administrator is required to notify the participant and each alternate payee of the administrator's determination as to whether the order constitutes a QDRO. This notice should be in writing and furnished promptly following a determination.

In the case of a determination that an order is not qualified, the notice should include the reasons for the rejection. It is the view of the Department that, in most instances where there has been a reasonable good faith effort to prepare a qualified domestic relations order, the parties will attempt to correct any deficiencies in the order and resubmit a corrected order for the plan administrator to review. The Department believes that, where a reasonable good faith effort has been made to draft a QDRO, prudent plan administration requires the plan administrator to furnish to the parties the information, advice, and guidance that is reasonably required to understand the reasons for a rejection, either as part of the notification process or otherwise, if such information, advice, and guidance could serve to reduce multiple submissions of deficient orders and therefore the burdens and costs to plans attendant on review of such orders.

The notice of the plan administrator's determination should be written in a manner that can be understood by the parties. Multiple submissions and unnecessary expenses may be avoided by clearly communicating in the rejection notice:

- the reasons why the order is not a QDRO;
- references to the plan provisions on which the plan administrator's determination is based;
- an explanation of any time limits that apply to rights available to the parties under the plan (such as the duration of any protective actions the plan administrator will take); and
- a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.

[ERISA §§ 206(d)(3)(G)(i)(II), 206(d)(3)(I); IRC § 414(p)(6)(A)(ii)]

**Q 2-15: What effect does an order that a plan administrator has determined to be a QDRO have on the administration of the plan?**

The plan administrator must act in accordance with the provisions of the QDRO as if it were a part of the plan. In particular, if, under a plan, a participant has the right to elect the form in which benefits will be paid, and the QDRO gives the alternate payee that right, the plan administrator must permit the alternate payee to exercise that right under the circumstances and in accordance with the terms that would apply to the participant, as if the alternate payee were the participant.

[ERISA §§ 206(d)(3)(A), 206(d)(3)(E)(i)(III); IRC §§ 401(a)(13)(B), 414(p)(4)(A)(iii)]

**Q 2-16: What disclosure rights does an alternate payee have under a QDRO?**

ERISA provides that a person who is an alternate payee under a QDRO generally shall be considered a beneficiary under the plan for purposes of ERISA. Accordingly, the alternate payee must be furnished, upon written request, copies of a variety of documents, including the latest summary plan description, the latest annual report, any final annual report, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. The administrator may impose a reasonable charge to cover the cost of furnishing such copies. It is the view of the Department that, at such time as benefit payments to the alternate payee commence under the QDRO, the alternate payee must be treated as a “beneficiary receiving benefits under the plan” and automatically furnished the summary plan description, summaries of material plan changes, and the plan’s summary annual report.

[ERISA §§ 104, 105, 206(d)(3)(J), 404(a); 29 CFR § 2520.104b-1 *et seq.*]

**Q 2-17: What happens to the rights created by a QDRO if the plan to which the QDRO applies is amended, merged into another plan, or is maintained by a successor employer?**

The rights of an alternate payee under a QDRO are protected in the event of plan amendments, a plan merger, or a change in the sponsor of the plan to the same extent that rights of participants or beneficiaries are protected with respect to benefits accrued as of the date of the event.

[ERISA §§ 204(g), 206(d)(3)(A), 403(c)(1); IRC §§ 401(a)(13)(B), 411(d)(6); *see* Staff of the Joint Committee on Taxation, Explanation of Technical Corrections to the Tax Reform Act of 1984 and Other Recent Tax Legislation, 100th Cong., 1st Sess. (Comm. Print 1987) at 224]

**Q 2-18: What happens to the rights created by a QDRO if a plan is terminated?**

In the view of the Department, the rights granted by a QDRO must be taken into account in the termination of a plan as if the terms of the QDRO were part of the plan. To the extent that the QDRO grants the alternate payee part of the participant's benefits, the plan administrator, in terminating the plan, must provide the alternate payee with the notification, consent, payment, or other rights that it would have provided to the participant with respect to that portion of the participant's benefits.

[ERISA §§ 206(d)(3)(A), 403(d)]

**Q 2-19: What happens to the rights created by a QDRO if a defined benefit plan is terminated and the Pension Benefit Guaranty Corporation becomes trustee of the plan?**

The Pension Benefit Guaranty Corporation (PBGC) is a Federal agency that insures pension benefits in most private-sector defined benefit pension

plans. It is important to note that not all plans are insured by PBGC and not all plans that terminate become trustee by PBGC. For example, defined contribution plans (including 401(k) plans) are generally not covered by PBGC's insurance. In addition, most defined benefit plans that terminate have sufficient assets to pay all benefits. PBGC does not trustee these plans. *See* Question 3-4 for a discussion of these basic types of retirement plans.

When an insured plan terminates without enough money to pay all guaranteed benefits, PBGC becomes trustee of the terminating plan and pays the plan benefits subject to certain limits. For instance, PBGC does not pay certain death and supplemental benefits. In addition, benefit amounts and the forms of benefit PBGC pays are limited. PBGC has special rules that apply these guarantee limitations to QDROs. *See* PBGC's booklet, **Qualified Domestic Relations Orders & PBGC**.

For information about a specific domestic relations order or QDRO affecting a plan trustee by PBGC, write to PBGC QDRO Coordinator, P.O. Box 151750, Alexandria, VA 22315-1750. For information about terminated pension plans that PBGC has trustee, benefit information with respect to a participant in a PBGC-trustee plan, or to request a copy of PBGC's booklet, call PBGC's Customer Contact Center at 1-800-400-PBGC (7242). The booklet is also available on the **Internet**.





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