

Qualified Domestic Relations Orders under ERISA: A Practical Guide to Dividing Retirement Benefits

Many Americans depend on retirement plans covered by the Employee Retirement Income Security Act (ERISA) for financial security in old age. These plans are often people's single biggest source of savings for retirement. When there is a divorce, it is very important that the divorce decree clearly and effectively addresses these retirement plan benefits. That way, the parties can count on the court's order to establish their rights, without further dispute.

Every year, divorced individuals expect to collect retirement benefits awarded in their divorce decree—and they usually do. But sometimes they fail to get a valid **Qualified Domestic Relations Order (QDRO)**, resulting in continued disputes and the loss of expected benefit payments.

This guide gives practical tips on how to make sure ERISA-covered retirement benefits are divided through a valid QDRO, so you don't have to worry about getting the benefits you expected after your divorce. While the tips here are mainly aimed at individuals going through a divorce, they should also be useful to attorneys.

Why you need a QDRO: Without a valid QDRO, retirement plans covered by ERISA can only pay benefits under the terms of the written plan document—for example, to the plan participants or beneficiaries—no matter what the divorce decree may say about how and to whom payments should be made.

What is a QDRO: It's a domestic relations order from a state court or other state authority that a retirement plan's administrator must qualify under the plan's rules before it can take effect. It authorizes the payment of a portion of the participant's benefits to an **alternate payee**, such as a former spouse, child, or other dependent.

What you can do: Use this practical guide to effectively navigate the QDRO process, ensuring the alternate payee will receive the benefits set forth in a divorce decree.

Best practice: Gather information about the retirement plan early in the divorce process. Don't wait until the end to address the QDRO. It's a good idea to consult with an attorney.

Use caution: Once a divorce is final, it's difficult to go back and fix mistakes. If retirement benefits aren't handled properly in the domestic relations order or divorce decree, you may not be able to get a QDRO later.

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Need more detailed guidance? Dig deeper with EBSA's **QDROs Guide**.

QDRO Basics



Is the retirement plan covered by ERISA?

This Guide provides information about retirement plans covered by ERISA.

Which Retirement Plans ERISA covers: ERISA applies to retirement plans sponsored by private employers. This includes plans jointly sponsored by employers and labor unions that may negotiate retirement benefits for their members.

What ERISA doesn't cover: Plans offering non-retirement benefits, such as certain savings, bonuses, and compensation plans. Additionally, plans provided for employees by governmental entities, like public schools and universities, or by churches are typically not covered. In these cases, it's best to contact the employer directly to determine whether the retirement plan is subject to ERISA.

Go deeper: Most states provide important protections for retirement benefits earned by either spouse during marriage. At the federal level, ERISA protects retirement benefits and safeguards them against claims by creditors. For example, creditors cannot claim funds in an ERISA-covered retirement plan, even if the participant files for bankruptcy. However, exceptions are made for obligations such as family or child support and when dividing property in a divorce, if the obligations are documented in a QDRO.

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For additional details, refer to EBSA's [FAQs about Retirement Plans and ERISA](#).



What are the parties' goals?

Identify the alternate payee: This is the person receiving a share of the benefit, typically a participant's former spouse, child, or other dependent.

Determine the QDRO's purpose: Most QDROs serve one of two different purposes:

- Divide retirement benefits to provide alimony or child support payments.
- Divide marital property when dissolving a marriage.

Questions to ask: Answers to these questions will help clarify the QDRO's purpose.

- Is the alternate payee the participant's spouse, former spouse, child or another dependent?
- Is the goal only to divide the future benefit payments and provide for death benefits or survivorship rights?
- Does the alternate payee want a separate right to receive a portion of the benefit?

Bottom line: Your answers will guide how you draft the QDRO and what details to include in the next steps.



What type of retirement plan is it?

Understanding whether a retirement plan is a defined benefit plan or a defined contribution plan is important, as each type raises unique questions for anyone drafting a QDRO.

Defined benefit plans are traditional pensions that typically guarantee a specific benefit—usually a monthly payment called an annuity—for life after retirement.

- Payments can begin when a participant reaches the plan's **normal retirement age** (outlined in the plan's Summary Plan Description). Payments continue over the participant's lifetime, or for married participants, over both spouses' lives.
- Many of these plans also offer **alternative forms of payment**.
- Some alternative forms of payment have a greater actuarial value than the normal retirement benefit, creating what's called a **subsidy**.¹

Defined contribution plans, such as 401(k)s or 403(b)s, provide a retirement benefit based on the value of the participant's individual account balance at the time of distribution.

- The participant's account balance represents the accrued retirement benefit and fluctuates daily with investment gains or losses, fees, and forfeitures.²
- Most of these plans pay benefit distributions in a single lump sum or installments.
- A money purchase pension plan is a special type of defined contribution plan that may offer annuities or periodic payments.

Bottom line: The type of plan determines the different approaches to dividing or distributing benefits in a QDRO.

¹ For tips to make sure your QDRO considers subsidies, refer to EBSA's [QDROs Guide](#), especially Appendix C.

² For tips to make sure your QDRO considers the impact of income and losses, refer to EBSA's [QDROs Guide](#), especially Appendix C.



How do you divide retirement benefits?

There are two common approaches for dividing retirement benefits through a QDRO: a **Shared Payment Approach** and a **Separate Interest Approach**. The right method depends on the type of plan, the timing of payments, and the goals of the parties. Each of the following approaches can be used for either a defined benefit plan or a defined contribution plan.

Shared Payment Approach

This approach divides each of the participant's retirement payments when they are made, allocating a portion of each payment to the alternate payee. In drafting a QDRO under this approach, consider the following:

- The alternate payee receives a share of each payment the participant receives.
- This approach is commonly used when a participant is already in pay status and has reached their **annuity starting date**, which is the first day of the first period for which the participant is eligible to receive retirement benefits.

Use caution: The alternate payee won't receive any payments under the QDRO if the participant never reaches their annuity starting date.

Separate Interest Approach

This approach gives the alternate payee a separate, independent right to a portion of the participant's retirement benefit. One advantage is that the alternate payee can receive payments at a different time and in a different form than the participant. In drafting a QDRO under this approach, consider the following:

- Specify the amount, percentage, or method for calculating the alternate payee's share of the participant's retirement benefit.
- Clarify the number of payments, or the time period the order applies to. You can often meet this requirement by giving the alternate payee the same rights the participant would have under the plan to elect the form of benefit payment and when the separate interest will be paid.

Bottom line: Federal law does not require a specific approach. You must determine which approach best meets your goals for dividing retirement benefits.

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For additional details, refer to EBSA's [QDROs Guide](#)



Have you contacted the plan administrator and reviewed plan documents before drafting the QDRO?

Before you start writing, contact the person or entity who administers the plan.

- Start by reaching out to the participant's employer or labor union.
- Ask to speak with the plan administrator or a benefits specialist in the human resources department of the participant's employer or labor union.
- Submit a formal written request for copies of key plan documents you will need, including the plan document, the Summary Plan Description (SPD), the plan's QDRO procedures, and recent participant-specific benefit statements. These documents will help you understand the value of the benefit being divided.

Best practice: Get plan information as soon as possible-- preferably before the divorce is finalized and while you're still a plan beneficiary. If you're having trouble getting plan information, contact EBSA at askebsa.dol.gov or call **1-866-444-3272**.

Review key plan documents: Start with the SPD. It offers a helpful overview and is often easier to navigate than the full plan document. Confirm any key terms with the plan administrator or refer to the plan provisions for clarification.

Ask for a model QDRO: Plans aren't required to provide one, but if they do, it can simplify drafting and help you avoid common errors—even though it won't guarantee approval.

Use caution: A proposed QDRO that violates plan terms will not be qualified as a QDRO.



Have you included all the required provisions?

The QDRO must clearly state the following:

- Name and mailing address of the participant and each alternate payee.
- Dollar amount, percentage, or method of determining the alternate payee's share of the participant's benefit.
- Number of payments or time period to which the assignment applies.
- Name of each plan to which the order applies.



Have you left out prohibited provisions?

The QDRO must not include any of the following:

- Any type or form of benefit that the plan does not offer.
- A requirement to pay more benefits than the plan allows, based on actuarial calculations.

- Benefits already assigned to a prior alternate payee.
- A Qualified Joint and Survivor Annuity (QJSA) based on the lives of the alternate payee and their subsequent spouse.³



How do you allocate the survivor benefits?

Retirement plans generally offer survivor benefits—payments made to someone else after the participant dies. There are special rules for a participant’s spouse to receive survivor benefits.⁴

Why survivor benefits matter: Federal law requires all retirement plans to provide benefits in a way that includes a survivor benefit for the participant’s spouse. For example, defined benefit plans and some defined contribution plans generally must provide benefits to a married participant in the form of a spousal annuity, unless waived by the spouse. A QDRO can protect a former spouse’s access to a retirement plan’s survivor benefits by assigning all or a portion of the survivor benefits to the former spouse as an alternate payee.

Determine the survivor benefit allocation: Before you draft the QDRO, determine who is currently entitled to the plan’s survivor benefits and understand the rules that apply.

- The allocation of the survivor benefits can vary depending on the plan and its normal form of retirement benefit distribution.
- Prior waivers or spousal consents can alter who is entitled to survivor benefits.

Bottom line: Determine the allocation of survivor benefits during the divorce and include them in the QDRO. If the parties agree to assign survivor benefits to the alternate payee, make sure both the divorce decree and the domestic relations order clearly state that the survivor benefits must go to the alternate payee—not to a new spouse or anyone else who would otherwise receive them under the plan.

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Survivor benefit allocations can involve complex rules under ERISA and the specific terms of the plan. For detailed guidance, refer to the [QDROs Guide](#), especially Question 3-5: “What are survivor benefits and why should a QDRO take them into account?”

³ Please refer to Appendix C of EBSA’s [QDROs Guide](#) for a description of a QJSA.

⁴ Some retirement plans provide that a spouse of a participant will not be treated as married unless he or she has been married to the participant for at least a year.



When can the alternate payee start receiving benefits?

The answer depends on the distribution approach and the retirement plan. But regardless of the approach used, the QDRO must specify the start and end of the alternate payee's benefits.

Shared Payment Approach: The participant must already be in pay status. The QDRO must include a specific date or tie the beginning of payments to a triggering event, such as when the participant's annuity starts.

- For child support, (assuming the participant is already in pay status) payments might begin as soon as the QDRO is qualified and continue until the child reaches maturity.
- For spousal support, the QDRO might state that payments will end when the former spouse remarries.

Separate Interest Approach: Defined contribution plans, like 401(k)s, may authorize an alternate payee to receive an immediate roll over—if the QDRO calls for it. Because this approach allows for payment at a different time than the participant, the plan's terms are especially important. If the plan doesn't address when the alternate payee can receive benefits, the alternate payee may need to wait until the participant reaches a certain age. Key factors that may influence when benefits can begin include:

- The plan's terms.
- The participant's age.
- Whether the participant is still employed by the plan sponsor.

Best practice: It's always a good idea to consult with the plan administrator, as this process is complex.

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For additional details, see EBSA's [QDROs Guide](#).



How will the benefits be distributed?

After assigning benefits and determining the earliest distribution date, the QDRO must specify the form in which the alternate payee will receive them.

A plan **cannot prevent a QDRO** from assigning any benefit distribution option to an alternate payee if that option is generally available to participants. Some plans offer limited options, like a lump sum, while others offer multiple forms. In some cases, an alternate payee may choose a different distribution form than the participant.

Best practice: Review the plan document or SPD to determine the distribution options, if multiple options are available.



Have you sought pre-approval from the plan before submitting your proposed QDRO to the state court or other entity authorized to issue domestic relations orders?

While working on the draft QDRO, ask if the retirement plan offers a pre-approval process.

Why it matters: Pre-approval helps you catch errors before the order is finalized. Plans are not required to offer pre-approval but it's worth checking.

Ask about fees: Check with the plan administrator to see if they charge a fee to review or qualify the proposed QDRO. To avoid the plan automatically deducting the fee from one party's share, you should clearly state in the QDRO which party will pay—or if the fee is split.

Once you've finished consulting with the plan administrator, submit the proposed QDRO to the domestic relations court or relevant state agency for approval and signature.



Have you sent the signed order back to the retirement plan for qualification?

Getting a signed order from the court or relevant state agency dividing the retirement benefit is not the final step.



The retirement plan must review and officially qualify the order.

Why it matters: Only the retirement plan can confirm the alternate payee's legal right to receive a portion of any retirement benefits and "qualify" it as a QDRO—not the court or relevant state agency.

What to expect from the plan: Once the plan receives the signed order, it may take time to qualify it. The plan must follow its own internal procedures. Even if the plan issued a pre-authorization letter, mistakes in the domestic relations order can lead to rejection. If the plan rejects your order, revise and resubmit it promptly.

Best practice: Get written confirmation from the plan that your order is qualified as a QDRO.

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For detailed information, refer to the [QDROs Guide](#), especially:

- Question 2-2: "What are the duties of a plan administrator upon receipt of a domestic relations order?"
- Question 2-10: "How long may the plan administrator take to determine whether a domestic relations order is a QDRO?"