

August 10, 2017

Mitigate Qualified Domestic Relations Order Risk with Best Practices

Retirement plan administrators have many important responsibilities that they must juggle daily. One such responsibility — often neglected — is the administration of qualified domestic relations orders (QDROs). While QDRO administration can be problematic and time intensive, the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (IRC) clearly outline the obligations of a plan administrator regarding QDROs for qualified retirement plans; these obligations must be met by all plan sponsors.

Brief background on QDROs

When ERISA was passed, federal lawmakers intended to protect the participant's benefit from claims by other parties, thus ensuring that the participant's benefit would be available for its intended purpose — providing the participant with an income in retirement.

Congress eventually saw the need to carve out an exception to these rules when marriages dissolve. Congress provided a limited exception by passing the Retirement Equity Act (REA) in 1984.

REA provides that domestic relations orders may be an avenue through which participants may assign some or all of their retirement benefits to a spouse, former spouse, child, or other dependent if the order is determined to be a QDRO. The determination of whether a domestic relations order is a QDRO is a responsibility of the plan administrator.

In this article, we examine some of the major issues in QDRO review, identify problem areas and how to avoid them, and offer guidance aimed at making the QDRO administration process efficient and effective for participants.

Plan administrator responsibilities

Identify and conquer. The keys to streamlining your QDRO process are to identify your responsibilities as a plan administrator and to create as much efficiency as possible. As a plan fiduciary, the plan administrator is expected to avoid unnecessary and excessive administrative burdens and costs. With the advice of legal counsel, a plan administrator can accomplish these goals by having a well-designed process.

Major QDRO issues a plan administrator is sure to encounter include:

- Information: What documents must be made available, to whom must they be given, and in what time frame?
- Plan procedures: Are procedures necessary? If they are, what must they include?
- Response disclosures and timeframes: What disclosures must be made and when?
- Communication: What is the context and/or content when speaking with participants, alternate payees, or attorneys?

Recognize that timing is everything. Supplying information to all involved requires timely communication of plan information and the procedures that will be used to qualify the domestic relations order. Plan participants and their beneficiaries expect to obtain access to enough plan and prospective participant information (requiring the proper authorization) to prepare a QDRO. In the early stages, a plan administrator would be wise to get the plan's QDRO procedures in the parties' hands before the parties send a draft order. This will limit time-consuming errors or revisions on both sides.

Plan information, however, can become out-of-date or irrelevant as the negotiation of the terms of the divorce evolves. Plan administrators do not have to provide access to plan or benefit information until a party can provide information reasonably sufficient to establish that the documents are being requested in connection with a domestic relations order.

Develop a QDRO procedures document. If your retirement plan falls under ERISA, Department of Labor (DOL) regulations make it clear that you must have QDRO procedures. Your QDRO procedures must be:

- In writing,
- Be reasonable,
- Explain all documents available for review,
- Explain time limits involved in the determination process, and
- Describe the administrative steps taken to protect and preserve the plan assets upon receipt of a domestic relations order.

These items must be in the procedures document; and, by carefully drafting the document you have the opportunity to include additional guidance. This additional guidance helps ensure that the proposed QDRO is complete and in compliance with the law and the terms of the plan. Since this reduces the time spent in the review and qualification of the domestic relations order, it reduces the total time necessary to complete the division of benefits.

Let your procedures document be the final word on any unanswered questions that may arise during your domestic relations order review.

Include the following additional information in your plan's procedures (if applicable):

- When a participant's account should be frozen
- Possible limitations on account valuation dates (for calculation purposes)
- How participant loans should be addressed (if any are allowed)
- How QDRO processing charges will be paid
- How to handle accounts that are not fully vested
- How to handle a domestic relations order that does not provide a valuation date

Addressing these items in your QDRO procedures will allow you to proceed with determinations without involving the parties in time-consuming revisions if the proposed order does not address these matters.

Provide a QDRO template. Perhaps the most important component of your QDRO procedures should be the inclusion of a model QDRO template. When used as a starting point for drafting, the template will greatly diminish the time and expense of both drafting and review, because many provisions of a proper QDRO for the plan have already been drafted. While you cannot demand that your template be used, encourage its use and emphasize the time and expense efficiencies for everyone involved.

Response disclosures and time frames

Plan administrators must be aware of their responsibilities in responding to domestic relations orders throughout the stages of the determination process. When a domestic relations order is received, the plan administrator is required to promptly notify the participant or the alternate payee of the receipt of the order with a copy of the QDRO procedures. The plan administrator is then expected to determine whether the domestic relations order is a QDRO and to notify the participant or alternate payees of this determination within a "reasonable period of time."

What is a reasonable period of time? The DOL's use of this term is intentionally vague, and each case usually depends upon the circumstances of the order. As long as the plan administrator responds promptly and documents all problems that were encountered in making a determination, there will be a strong case showing the plan administrator acted appropriately should responsiveness be questioned.

If for any reason the domestic relations order fails to qualify as a QDRO, clearly state in writing why the order failed and how to fix the problem. This helps in avoiding any miscommunications and minimizes revisions.

Communication

Effective communication throughout the QDRO process is crucial in reducing the time and expense associated with administering your plan's QDROs.

This is a difficult period for all parties involved. These individuals are dealing with a multistep process that may

be difficult to understand, especially if they are attempting to go through the process without the assistance of an attorney. It is important to have a knowledgeable staff that will go over any questions an individual may have in a clear and concise manner. If the parties are represented by counsel, avoid unnecessary repetitive contact with the individuals and speak directly with each party's counsel to resolve any issues.

You will inevitably receive a call or questions from an individual who is unhappy with his or her situation or is unfamiliar with the QDRO process. It is not unusual for an individual to ask for unreasonable relief. Remain calm and patient with any belligerent parties. This is a situation where you will find having well-crafted QDRO procedures very helpful. Providing QDRO procedures early and producing detailed correspondence regarding the steps in the QDRO process should reduce unnecessary questions and unreasonable requests.

To further protect against fiduciary risk and liabilities, document all correspondence and phone conversations.

Consider outsourcing

Sometimes the best way to take care of your participants is to hire someone else to take care of them. Outsourcing may be particularly helpful. QDROs are a time-consuming administrative procedure for the plan sponsor, and part of a highly stressful experience for the parties involved. A third-party can alleviate the administrative burden and shelter the plan administrator from possible claims of bias and ill will.

Conclusion

The effective management of QDROs requires a plan administrator's diligence. It does not, however, have to be overly burdensome or onerous. Any plan administrator with advice of legal counsel, a well-drafted set of QDRO procedures, and a properly trained, attentive staff should have all the tools necessary for the effective implementation of any and all domestic relations orders received. If you have not reviewed your QDRO process recently, it might be a good idea to analyze your QDRO game plan, keeping the tips provided in this article in mind.

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