**QUALIFIED DOMESTIC RELATIONS ORDER**

**DRAFTING CHECKLIST**

Updated October, 2025

ERISA 206(d)(3) requires that a domestic relations order must meet requirements stated in that section to be considered a Qualified Domestic Relations Order (QDRO). In Part I, this checklist reviews those provisions that must be included in a QDRO and those that cannot be included. Part II, reviews other Issues that should be addressed in a domestic relations order but not explicitly required by statute.

**Default Provisions in Plan documents:** Some plans have “default” provisions that may affect what must be included in the QDRO. Such provisions might, for example, specify when distributions to an alternate payee may be made, how benefits awarded to and alternate payee are affected by the death of the participant and/or alternate payee. Such provisions might also describe to what extent the alternate payee has certain rights under the plan. You need to be aware of any default provisions to avoid incompatible provisions in the order and to evaluate if the order should modify the plan’s default. Any such defaults will be described in plan documents and/or plan QDRO Procedures.

**Part I. Requirements for a QDRO.**

Check if completed

1. Name of participant \_\_\_\_\_\_

2. Address[[1]](#footnote-1) of participant \_\_\_\_\_\_\_\_\_\_\_\_

3. Name of alternate payee[[2]](#footnote-2) \_\_\_\_\_\_\_\_\_\_\_\_

4. Address of alternate payee \_\_\_\_\_\_

5. Order is a judgment, decree, or order of a **state domestic relations court**.[[3]](#footnote-3)

6. Order relates to the provision of child support, alimony, or marital property rights of a spouse, former spouse, child or dependent of the participant.

7. Name of each plan to which the order applies? [[4]](#footnote-4)

\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_

8. Order requires each named plan to pay benefits to an alternate payee now or in the future[[5]](#footnote-5)

9. Order states amount payable to each alternate payee or a formula to calculate amount to be paid to each alternate payee by each plan to which the order applies. (If a formula is used, all information needed to calculate the amount should be included in the order or already in plan records—date of division, formula).

Describe amount or formula for each plan and each alternate payee. Is formula consistent with terms of the plan, for example, if order divides an “account” is plan a DC plan.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

10. Order states number of payments or period to which order applies or when payments to alternate payee begin and end. (It is sufficient to state that alternate payee may elect benefits commence at any time after participant has attained “earliest retirement age” under plan and that alternate payee may elect payment form. Payment form elected will define time period.)[[6]](#footnote-6)

Indicate number of payments or period for each plan and each alternate payee. If alternate payee may elect commencement and payment form, indicate “elect”.

\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_

11. If order does not give alternate payee right to elect time of benefit commencement and/or form of benefit payment, does order state the time benefits commence and/or form in which benefits will be paid or state another method to determine the commencement and/or form of payment?

(It is sufficient if the order awards the alternate payee a “shared payment” -- portion of the participant’s benefit for participant’s lifetime and in form of payment participant elects).

Form of payment to each alternate payee:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

12. Does order require plan to pay any type or form of benefit not otherwise provided under plan?[[7]](#footnote-7)

Type or form of benefit: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Verified in plan?

13. Does order require plan to pay benefits which would exceed actuarial value of benefits to which participant would be entitled if participant retired on date benefits to alternate payee are to commence?[[8]](#footnote-8) Example: Does order remove or modify actuarial reductions provided in plan?

14. Order does not require plan to pay benefits to alternate payee that are required to be paid to another alternate payee under a previous QDRO.

15. Order does not require plan to pay benefits to alternate payee prior to the date participant attains (or would have attained) “earliest retirement age” under plan. The “earliest retirement age” depends on terms of plan. Order may refer to payment at “earliest retirement age”. If order requires payment at specific time, plan terms must be reviewed to determine “earliest retirement age”. [[9]](#footnote-9)

16. If order permits payments to alternate payee prior to date participant’s benefits commence, order does not require plan to pay full amount of a subsidized early retirement benefit. (Typical actuarial reduction for early retirement is approximately ½ of 1% per month. If reduction is less under plan terms, benefit is likely subsidized.)

**II. Other Issues that should be addressed in DRO but not explicitly required by statute:**

What happens to alternate payee’s benefits after death of participant or alternate payee:

1. **If alternate payee dies before either alternate payee’s or the participant’s benefits commence**?
2. Benefits may revert to participant or order may name a successor alternate payee.
3. Neither alternate payee nor order may designate a beneficiary unless plan permits participant and/or alternate payee to designate a beneficiary prior to benefit commencement.[[10]](#footnote-10) Such designation would disqualify order.
4. Typically, DC plans will permit the designation of a beneficiary before the alternate payee’s benefit commencement, but DB plan will not.
5. **If the alternate payee dies after participant’s benefits commence?** 
   1. Shared Payment Order: DB Plan--If alternate payee dies, alternate payee’s portion may revert to participant or be paid to a successor alternate payee named in a QDRO. Alternate payee may not designate a beneficiary unless plan terms provide. DC plan--Alternate payee’s portion of account likely paid in lump sum.
   2. Separate Interest Order: DB plan--The disposition of alternate payee’s benefits will be determined by benefit form selected by alternate payee or stated in order at time benefits commenced and beneficiary designated if benefit payment form providing payments to a beneficiary was selected. DC plan – If plan permits alternate payee to designate a beneficiary, alternate payee’s separate interest in account will pass to beneficiary.
6. I**f participant dies before either alternate payee’s or participant’s benefits commence?** 
   1. Shared Payment Order: DB Plan--Because alternate payee receives a share of each payment to participant, death of participant means alternate payee will not receive any portion of participant’s lifetime benefit payments. Alternate payee will receive all or a portion of the QPSA if QDRO requires alternate payee to be treated as spouse of participant for that purpose. DC Plan—no distribution to participant so no portion to alternate payee.
   2. Separate Interest Order: DB Plan—plan may provide that participant or alternate payee benefits are forfeited upon death before applicable annuity starting date except for survivor benefits. **This must be stated in plan rules. If plan provides for forfeiture, alternate payee’s separate interest could be lost. Provide for alternate payee as surviving spouse in the event of forfeiture of separate interest.[[11]](#footnote-11)**

DC Plan – Ability of plan to forfeit upon death does not apply to DC Plans except for money purchase plans.[[12]](#footnote-12)

1. I**f the participant dies before the alternate payee’s benefits commence but after participant’s benefits commence?**
   1. Shared Payment Order: DB and DC plan --alternate payee’s benefits or right to benefits will cease upon the death of the participant unless the order provides that the alternate payee is to be treated as the spouse of the participant for purposes of a QJSA.
   2. Separate Interest Order: DB Plan – review plan rules to determine if alternate payee’s benefits may be affected. As described in 3. above, plan may provide that benefits are forfeited if the participant or alternate payee dies before the applicable annuity starting date.
2. **If the participant dies after the** **alternate payee’s benefits commence but before the participant’s benefits commence?**
   1. Shared Payment Order: DB or DC Plan--Alternate payee’s benefit is a portion of payments made to participant so alternate payee’s benefit has not commenced in this fact pattern.
   2. Separate Interest Order: DB or DC Plan --Alternate payee’s benefit not affected by the death of the participant. Benefits may only be forfeited before annuity starting date.[[13]](#footnote-13)
3. DRO provides for the payment of all or portion of benefit awarded to alternate payee to a **beneficiary** of the alternate payee
   1. Defined Benefit Plan-- Alternate payee may designate a beneficiary only if (1) the order provides for a separate interest and at **benefit commencement (annuity starting date)**, alternate payee selects a benefit payment form that provides for a benefit to a beneficiary, or (2) the plan terms expressly permit alternate payee to designate a beneficiary before benefit commencement. Order can name a successor alternate payee.
   2. Defined Contribution Plan -- order should state that the alternate payee has the right to designate a beneficiary prior to distribution of the alternate payee’s portion of the account.

Management of Account in DC Plan

In the case of a DC plan, the order should state whether the alternate payee may exercise the following rights over the portion of the account awarded to the alternate payee to the extent the plan terms provide for these rights. DC plan may not provide for direction of investments, loans or hardship distributions. These are optional features.

* Direct Investment of assets in account
* Loan from the account
* Hardship Distribution from the account (not permitted for money purchase plan)

If the order does not give the alternate payee the right to direct investments in the portion of the account awarded to the alternate payee, the order should clarify how the assets in that portion of the account will be invested before alternate payee’s benefits are distributed.

Processing Issue

Requirement of application for alternate payee benefit to commence:

* 1. Statute does not require an application. Participant must file an application to satisfy the notice and consent requirements of the Code. Consent requirements do not apply to alternate payees except as required by a QDRO. See Treasury Reg. 1.411(a)-11(c)(6). However, plan must obtain information from alternate payee including benefit payment option.
  2. Since consent of the alternate payee is not required before the annuity starting date, the benefit choices of an alternate payee can be applied retroactively for DB plan benefits.

1. DOL QDRO Booklet Q. 2-9 states that identity information may be supplemented if not complete. **Plan may not accept this so best practice is to provide complete and accurate information.** [↑](#footnote-ref-1)
2. The order is permitted to make payment to someone with legal responsibility for the alternate payee, such as a guardian or party acting *in loco parentis* in the case of such child, or a trustee as agent for the alternate payee. A state agency may be named as an alternate payee if it fills one or more of these roles. Adv. Op. 02-03A. [↑](#footnote-ref-2)
3. 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 order, whether service was properly made on party, or whether alternate payee is a “spouse,” “former spouse,” “child” or “other dependent” of the Participant under state law. Adv. Op. 92-17A; Adv. Op. 99-13A. Pre-nuptial agreements have no effect on order. When a plan receives an order requiring that all or part of participant’s benefits payable be distributed to alternate payee, the plan administrator **must** determine whether order is a QDRO. A restraining order may qualify as a QDRO, as could an income withholding notice by a county child support enforcement agency. Adv. Op. 01-06A. An order of a tribal court is not a domestic relations order. Adv. Op. 11-03A. [↑](#footnote-ref-3)
4. Plan sponsors may have more than one plan and many plans of the same or related sponsor have similar names. Verify the name of the plan or plans. [↑](#footnote-ref-4)
5. An order may be a QDRO even if it would supersede or amend a pre-existing QDRO assigning the same participant’s benefits to the same alternate payee, and reducing the benefit, so long as the amended order still meets the requirements to be a QDRO. Adv. Op. 04-02A. [↑](#footnote-ref-5)
6. It is sufficient to state that the alternate payee may elect to receive benefits in any form of payment permitted by the plan except a joint and survivor annuity with a subsequent spouse of the alternate payee. The benefit form elected will define the period of payment. If alternate payee is not given the right to elect commencement, order must clearly state when the payments will begin and when they will end. [↑](#footnote-ref-6)
7. Terms of plan may not be changed by order except as specifically provided by statute. This may include time of payment, eligibility conditions for a payment form, when a beneficiary may be designated and for what benefit. [↑](#footnote-ref-7)
8. Example: Order may not allocate separate benefits to alternate payee for lifetime and also award survivor benefits to alternate payee based upon the same portion of the participant’s benefit. The order would provide an actuarially increased benefit. If a separate interest is awarded to alternate payee, survivor benefits must be based on the portion NOT awarded to alternate payee or survivor benefits may be awarded only if the participant dies before the alternate payee’s separate interest benefits commence if the plan provides that benefits are forfeited upon the participant’s death. Example: Alternate payee is awarded a separate interest of 50% of the participant’s benefit, plus a 50% survivor benefit for alternate payee’s life, based on the same portion of the participant’s benefit without an actuarial reduction in the alternate payee’s benefit. Or order provides that alternate payee’s survivor benefit will not be adjusted for age. Legislative History states: “An order does not require a plan to provide increased benefits if the order does not provide for the payment of benefits in excess of the benefits to which the participant would be entitled in the absence of the order.” Senate Explanation of 1986 Tax Reform Act, Technical Corrections to Retirement Equity Act, P.L. 99-514, October 22, 1986. [↑](#footnote-ref-8)
9. Example: A defined benefit plan permits retirement benefits to be paid beginning when the participant reaches age 55 and terminates employment. It does not permit earlier payments based on separation from employment. The earliest retirement age for this plan is the earlier of (a) the date on which the participant is entitled to a distribution under the plan (i.e., actually separates from service or becomes disabled, applies for and is approved for a benefit), or (b) the later of age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service (age 55 for this plan). Because age 55 is later than age 50, the second part of the formula can be simplified to read “age 55” so that the formula reads as follows: the “earliest retirement age” is the earlier of (a) the date on which the Participant is entitled to a distribution under the plan or (b) the date the Participant attains age 55. The earliest retirement age will be the date on which the participant reaches age 55 unless the Participant terminates employment and retires earlier. DOL QDRO Booklet Q. 3-10; ERISA 206(d)(3)(E); IRC 414(p)(4). [↑](#footnote-ref-9)
10. Treas. Reg. 1.401(a)-13(g)(4)(iii)(B). [↑](#footnote-ref-10)
11. Code 411(a)(3)(A); Treas. Reg. 1.401(a)-20, Q&A 10(b)(4); Treas. Reg. 1.401(a)-20, Q&A 13; Treas. Reg. 1.411-4(b)(1) -benefits forfeitable upon death. [↑](#footnote-ref-11)
12. Treas. Reg. 1.401(a)-20, Q&A 13 [↑](#footnote-ref-12)
13. See Treas. Reg. 1.401(a)-20, Q&A 10(b)(4); Treas. Reg. 1.401(a)-20, Q&A 13. [↑](#footnote-ref-13)