**What you need to know about your client and the plan**

**to advise client in a divorce**

**In what type of plan or plans does P participate? How many?**

WHY: DB Plan –pays benefits for P’s life; DRO must divide the accrued benefit or a payment stream (if P has retired). If P has not retired, need to consider payment options available to AP. DC Plan – DRO will divide an account. Plan may offer distribution options. Some DC Plans have distribution restrictions under law similar to DB Plans including survivor benefits.

Identify ALL Plans of P. Many plans have similar names. Include provisions in divorce decree re what happens if all plans are not disclosed.

WHERE TO FIND THIS INFORMATION: The only source for this information is the P, AP or counsel. You can’t start searching for websites or the plan administrator until you have identified the plan or plans or the plan sponsor.

**Have P’s benefits commenced?**

WHY: Affects structure of DRO. DB Plan – If P’s benefits have commenced, can only use shared payment method unless plan permits change in elected benefit option. DC Plan—account likely already distributed.

WHERE TO FIND THIS INFORMATION: P, AP, counsel or plan administrator if the plan has been identified.

**If P’s benefits have commenced, were parties married at the time participant’s benefits commenced?**

WHY: DB Plan--AP may be surviving spouse or if spouse waived surviving spouse benefit, spouse may have to consent to any change in beneficiary designation. Depends on plan terms. DC Plan – depending on type of DC Plan and how benefits are being paid, spouse may have some consent rights to benefits.

WHERE TO FIND THIS INFORMATION: P, AP, counsel, plan administrator if the plan has been identified.

**If P’s benefits have commenced, what is the benefit payment form? (E.g., single life annuity, joint and survivor with AP or subsequent spouse, joint and survivor with a non-spouse beneficiary, certain and life payment form, lump sum distribution of account, installment payment of account)**

WHY: DB Plan – if AP is surviving spouse, AP remains surviving spouse unless changed by QDRO. If surviving spouse benefits were waived, spousal consent may be required to change beneficiary. DC Plan – has account been fully distributed or are installment payments being made or did P elect an annuity (depends on type of DC Plan).

WHERE TO FIND THIS INFORMATION: P or AP (award letter), but more likely from plan administrator if plan has been identified.

**If P’s benefit has not commenced, what is the amount of P’s accrued benefit or account balance? What portion may be allocated to AP under applicable local/state practice? Is P still earning benefits? Did P have a prior spouse? If so, does prior spouse have a QDRO?**

WHY: Amount is relevant to parties’ financial arrangements in divorce. If only a small portion of pension/individual account is subject to division, parties may choose to allocate all of pension to P and award other assets to AP thus avoiding QDRO issues. If P is still earning benefits (P has never retired or has retired and then returned to work), DRO must deal with increasing value of benefit/account due to work. If there is a prior spouse that has or could have a QDRO, this may affect the property division.

WHERE TO FIND THIS INFORMATION: P or AP re amount (from plan correspondence). Is P still earning benefits? P or AP or plan administrator.

**Obtain relevant Plan Documents:**

Formal Plan – website, plan administrator

Summary Plan Description—website, plan administrator, P/AP.

QRDO Procedures – plan administrator

Plan notices and information – website, plan administrator and possibly P/AP.

WHY: You will need these documents to evaluate and draft the DRO provisions re the award to AP. What type of plan is this? (See first question.) What benefit options are available? When is Ps earliest retirement age (if P is not already retired)? What is the process to submit a DRO and commence APs benefits? Does the plan charge to review an order (DC Plan)? Does the plan provide for the forfeiture of P/APs benefit upon death before benefits commence. Plan documents may refer to related plans including life insurance or health that could impact choices made in DRO.

WHERE TO FIND THIS INFORMATION: if you know the plan name, it may have a website with some of this information or the plan administrator may provide information. While the statute seems to state that an AP is only entitled to plan information after a QDRO is approved, DOL takes a different position in its QDRO FAQs.

**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.

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

[FAQs about Determining Qualified Status and Paying Benefits](https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qualified-domestic-relations-order-determination.pdf)

If plan will not provide documents and divorce decree provides any information about the award of benefits to AP, submit divorce decree to plan. This order is a DRO even if not a QDRO. Plan must process the DRO, provide QDRO procedures and likely reasons it is not a QDRO. In the absence of documents, this information can be useful.

**Does AP have a pension? What are APs financial circumstances? Is AP working? Do P/AP have children?**

WHY**:** If AP has a pension it may have been divided or offset against P’s pension. AP’s pension and employment tell you financial circumstances of AP and whether AP will need Ps pension benefits ASAP or will want to have the ability to defer receipt. If AP has children, AP may want to choose a payment option that provides a benefit to children if AP dies. Ps children could be named successor AP in the event of APs death.

WHERE TO FIND THIS INFORMATION: From AP.

**Are either P or AP in poor health?**

WHY: This will affect the structure of the DRO. If AP is in poor health, AP will want to maximize benefits to children or beneficiary. If P Is in poor health, AP will want to include provisions for benefits in the event of Ps death. For example, if P has not retired, a shared payment order is not the best choice. Also need to determine if plan will forfeit AP separate interest if P dies before benefit commence. AP should be named as surviving spouse.

WHERE TO FIND THIS INFORMATION: From AP.