9 REASONS WHY PLAN ADMINISTRATORS REJECT QDROS

There are many reasons why proposed QDROs are rejected, and here we look at nine of the more common ones.

By Theodore K. Long

The plan administrator has the final say about a QDRO. Many parties (and some attorneys) think that if the judge orders it that the plan must comply. However, the plan cannot be made to provide any form of benefit that is not otherwise available under the terms of the plan. There are many reasons why proposed QDROs are rejected. Here are a few of the more common ones.

1.Wrong Plan Name: The parties very often to do not know the correct name of the pension plan to be divided. Moreover, as companies are bought and sold, the names of plans change. The plan name must be the correct, complete legal name. Often, the parties get confused and use the name of the fiduciary trust company – the money holder – as the plan name. If the pensionholding spouse has a 401(k) plan with ABC Company but the money is held in accounts with Vanguard the correct plan name is (probably something like) ABC Company 401(k) Plan NOT Vanguard 401(k) Plan.

2. QDRO for the Wrong Type of Plan: There are very basic differences between a defined benefit plan and a defined contribution plan and writing a QDRO for a Defined Benefit Plan when the plan is actually at Defined Contribution Plan (or vice versa) means rejection.

3. Increases or Decreases in a Defined Contribution Plan Not Addressed: The lapse between the date of valuation and the date of distribution means that the QDRO must address the provision for increases and/or decreases in the amount of money going to the alternate payee. The Alternate Payee need not automatically share in gains and losses but the QDRO should address the option.

4. The Valuation Date Not Feasible or Permitted: Some plans permit valuations only on specific dates, such as the end of the month or the end of the quarter. Moreover, some Defined Benefit Plan plans cannot determine the accrued benefit in the distant past.

5. Beneficiary for Defined Contribution Plan: In the event the alternate payee dies before he or she receives distribution, some plans require that the QDRO name additional alternate payees. Alternatively, the QDRO may incorporate language that provides that the money is paid to the Alternate Payee's estate in the absence of a designated beneficiary.

6. Combining a Percentage and a Dollar Amount: When the language used is not clear and concise, problems arise, for example, if the QDRO states that the alternate payee receives "50% of the account balance less $6,000." Written that way it is not clear whether the $6,000 get subtracted first, then 50% taken, or, is 50% taken, then $6,000 gets subtracted.

7. Form of Benefit Designation for Defined Benefit Plan: Not all plans allow the same benefit options. Occasionally, a plan will not allow the alternate payee to choose to have the benefit paid for the lifetime of the alternate payee instead of the lifetime of the participant, and making that choice in the QDRO will cause rejection. Almost all plans do not allow any benefit form options for the alternate payee once the participant has begun receiving benefits, so providing that the alternate payee has options in the QDRO can cause rejection."

8. When Payments Begin: QDROs for both Defined Benefit Plan and Defined Contribution Plan may have problems with the start of payments. In a Defined Contribution Plan, this happens when the alternate payee requests an immediate distribution, when the plan doesn't so allow. In a Defined Benefit Plan, it happens when the alternate payee requests a time for benefits to begin that is not allowed in the plan. Plans are also rejected when no starting date is requested. Benefits can begin either upon: "a) early retirement age, or b) regular retirement age, or c) As otherwise provided in the plan. The QDRO should usually allow the alternate payee the option of choosing when payments begin, always subject to the plan terms however. Many older decrees stated that the alternate payee would receive a share of the benefits "if, as and when" the participant receives benefits, so the above options would not be consistent with that decree."

9. Form of payment: Designating a form of payment that is not consistent with plan guidelines will ensure a rejection by the plan administrator. Many parties mistakenly assume that a traditional Defined Benefit Plan will allow a lump sum distribution while the reality is that very few offer that form of payment.

Theodore K. Long formed Pension Appraisers, Inc., in 1989, which specializes in determining the present value of defined pension benefits for equitable distribution purposes and the preparation of Qualified Domestic Relations Orders. In 2009 Mr. Long formed Pension Appraiser Online, Inc, a sister company, which operates QdroDesk.com and PensionAppraisalDesk.com. These two web-based solutions have been innovative in the pension valuation and QDRO preparation industry.