
**GENERAL
INFORMATION****Federal
Requirements**

Qualified Domestic Relations Orders (QDRO) and Eligible Domestic Relations Orders (EDRO) laws have evolved over time. In 1974, the Federal Government passed the Employee Retirement Income Security Act, Title 29, Chapter 18 of the US Code (ERISA). The purpose of the Act was to protect pensions by keeping them intact.

After ERISA enactment, it became clear that some people with protected pensions had child or spousal support obligations. It became necessary to attach pensions under limited circumstances.

In 1984, ERISA was amended by the Retirement Equity Act (REA) to allow attachment of private pensions. The attachment orders are Qualified Domestic Relations Orders (QDROs) and are used instead of withholding orders. The pensions established through public employment, such as federal, state and local governmental pensions, are not included in the Retirement Equity Act.

Federal legislators created protections for railroad and federal employee retirement benefits similar to those in ERISA. As it recognized a similar need to attach the excluded funds for support, the federal government provided laws allowing federal pensions (including military pensions) and railroad pensions to be attached. Authority for attaching these funds may be found in various federal statutes. State and local pensions remain under the jurisdiction of the states.

**State
Requirements**

In 1991, Michigan adopted Public Act 46, the Eligible Domestic Relations Order Act, which extends the provisions of the Retirement Equity Act to Michigan public employment pensions. In Michigan, the orders are Eligible Domestic Relations Orders (EDROs).

**LEGAL
REFERENCES**

29 USC 1001 (23) provides the definition of governmental plans. 29 USC 1003(b)(1) and 29 USC 1051 exempt governmental plans from the ERISA and the REA. Note: ERISA provisions are closely tied to the Internal Revenue Code (IRC).

MCL 38.1501, et seq., is the Municipal Employees Retirement Act of 1984, which authorizes public entities such as the cities, counties, courts, or public service employer, etc., to participate in the retirement system.

MCL 38.1701-38.1711 is the enabling legislation which extends the provisions of the REA to public sector retirement plans and is known as the Eligible Domestic Relations Order Act. (46 PA of 1991)

ENFORCEMENT OVERVIEW

This item addresses the enforcement of spousal and child support when the payer receives or is eligible for benefits from a retirement plan. Qualified Domestic Relations Orders (QDROs - private sector employment) and Eligible Domestic Relations Orders (EDROs - Michigan public employment) provide the mechanism to enforce support orders from retirement plans.

Obtaining The Order

To secure the order, the FOC may use either an Order to Show Cause (OSC) which includes a request for QDRO/EDRO relief, or a specific motion for a QDRO/EDRO. There are no statutory provisions for a notice-only process as there is for income withholding. A motion and an order for QDRO/EDRO have been developed. (See exhibit 4DM 545X3, motion for QDRO/EDRO; exhibit 4DM 545X4, order for QDRO/EDRO; exhibit 4DM 545X5, QDRO/EDRO cover letter.) These forms are not sufficient to use for federal or non-Michigan pensions. They may however serve as a basis from which to draft the necessary documents.

Specific retirement plan information is required to prepare the order. The Friend of the Court must contact the plan administrator or employer for the correct name of the plan, address and other information if there is no prior experience with this retirement plan.

It is recommended that an FOC work with the Plan Administrators, urging them to accept the standard QDRO/EDRO order and make as few changes as possible. This will enable an FOC to more effectively and efficiently process a QDRO/EDRO and reduce the potential trial and error of determining the requirements for a particular QDRO/EDRO. (See exhibit 4DM 545X 6, plan contact letter if no response.)

Does The Order Qualify?

Each retirement plan has a plan administrator who must be served the QDRO/EDRO by ordinary mail. The plan administrator has the responsibility for deciding if the order is a qualified order. **Plan administrators for a private employer retirement plan (QDRO) have up to eighteen months to make this decision (per the United States Code provisions previously listed under legal references).**

Plan administrators of Michigan public employer retirement plans (EDRO) are to reply promptly.

Payments

After determining that the domestic relations order qualifies (as either QDRO or EDRO) the plan must start making payments. The standard QDRO/EDRO requires the plan to pay the local Friend of the Court

(FOC) and the court case payee or children. If the plan administrator refuses to make the checks payable to the FOC you should request the payee sign a limited power of attorney. (See exhibit 4DM 545X7, power of attorney cover letter; 4DM 545X 8, power of attorney.)

Notifying Other Friends Of The Court

Share the discovery of the retirement benefit with other FOC offices who have cases with the payer. Since these orders are case order specific and are not to be allocated, consider the Consumer Protection Act parameters as well as the equitable issues. The coordination should come as close as possible to the Allocation and Distribution Policy issued by the State Court Administrators Office.

If An Order Is Rejected

A plan administrator may reject a domestic relations order as a non-qualifying order. The order can be redrafted and resubmitted to the plan administrator. Reason(s) for rejection must be specified by the plan administrator.

Collection Limits And Adjustments

A 50% maximum is to be used if the payer is drawing retirement plan benefits. The Consumer Credit Protection Act (CCPA) does not apply when:

- the payer chooses not to draw benefits from the plan at the time of the order; or,
- a lump sum payment is ordered.

The FOC must understand the retirement plan payment options, the status of the Friend of the Court accounts, and the statute of limitation issues in order to make the best selection on the amount to be paid and the method of payment. Benefits can be increased and orders may need to be adjusted upward.

The FOC must notify the plan administrator of any change in circumstances which may affect payment amounts, e.g., arrearage is paid in full or the amount of the support obligation changes because children reach age of majority. Certain circumstances require entry of a new order. Review the underlying order to determine whether a letter or order is required. (See the following exhibits: 4DM 545X9, motion to modify or cancel QDRO/EDRO; 4DM 545X 10, modified QDRO/EDRO order; 4DM 545X 11, QDRO/EDRO modification cover letter; 4DM 545X 12, order to terminate/cancel QDRO/EDRO; 4DM 545X 13, QDRO/EDRO termination/cancel cover letter.)

DEFINITIONS

42 USC 666(b)(8) defines the term **income** as “any periodic form of payment due an individual, regardless of source, including wages, salaries, commissions, bonuses, worker’s compensation, disability, payments pursuant to a pension or retirement program and interest.”

MCL 552.602(j)(ii) defines **income** as “*a payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental unemployment benefits, or worker’s compensation.*”

**Definitions
Specific to QDRO**

Note: Corresponding FOC terms are in italics at the end of the definition.

“**Alternate payee**” means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to the participant (*i.e. Payee*).

“**Domestic relations order**” means any judgment, decree, or order which relates to the provision of child support or alimony payments and is made pursuant to a State domestic relations law (*i.e. Support Order*)

“**Earliest retirement age**” means the earlier of the date on which the participant is entitled to a distribution under the plan, **or** the later of the date the participant attains age 50; **or**, the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

“**Governmental plan**” includes any city, county, state, federal, military or railroad retirement plans.

“**Participant**” refers to a member of a pension plan (*i.e. Payer of Support*)

“**The plan**” refers to the private sector or public entity retirement plan.

“**Plan Administrator**” refers to the person or persons who administer the plan. If the name of the administrator is not in the plan document, the employer is considered to be the plan administrator.

“**Qualified Domestic Relations Order (QDRO)**” means a domestic relations order which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan.

**Definitions
Specific to EDRO**

“**Alternate payee**” means a spouse of a participant under a judgment of separate maintenance, or a former spouse, child, or dependent of a

participant, who is named in an eligible domestic relations order (*i.e. Payee*).

“Benefit” means an annuity, a pension, a retirement allowance, or an optional benefit accrued or accruing to a participant under a retirement system or a post-retirement subsidy payable to a participant under a retirement system.

“Domestic relations order” means a judgment, decree, or order of a court made pursuant to the domestic relations law of this state and relating to the provision of alimony payments or child support, to a spouse of a participant under a judgment of separate maintenance, or to a former spouse, child, or dependent of a participant (*i.e. Support order*).

“Earliest retirement date” means the earliest date on which a participant meets all of the requirements for retirement under a retirement system except for termination of employment.

“Eligible Domestic Relations Order (EDRO)” means a domestic relations order that is considered an eligible domestic relations order under MCL 38.1711 or that meets all of the requirements listed below in the EDRO requirements section.

“Participant” means a member, deferred member, vested former member, deceased former member, or retiree under the retirement system (*i.e. payer of support*).

“Post-retirement subsidy” includes, but is not limited to, all of the following:

1. A supplemental annuity;
2. A supplemental payment to a participant;
3. A percentage increase to a benefit payable to a participant;

Any other payment to a participant or increase to a benefit payable to a participant, excluding health benefits.

“Retirement system” means a public employee retirement system created and established by this state or any political subdivision of this state.

OTHER DEFINITIONS

Accrued benefit - the benefit the participant has earned under the plan.

Actuarially equivalent - having the same value as of a given date using the same assumptions as of that date.

Lump sum - a form of benefit payment in which the entire benefit is paid at one time.

Value - the actuarially estimated amount needed at a point in time to provide monthly benefits in the future. Value depends on the amount of the monthly benefit payment, when the benefit payments start and stop, age(s) of the recipient(s), mortality assumptions, and interest assumptions. Also referred to as “present value” or “actuarial present value.”

Spouse - husband or wife as determined under applicable state law. A QDRO can provide that the participant’s former spouse be treated as the participant’s spouse.

ELEMENTS OF A QDRO TO COLLECT CHILD SUPPORT

A domestic relations order meets the federal requirements of being a QDRO if the order clearly specifies:

1. The name and the last known mailing address (if any) of the participant and each alternate payee covered by the order; (See Family Violence Exception);
2. The amount or percentage of the participant’s benefits to be paid by the plan to each alternate payee, or the manner in which the amount or percentage is to be determined;
3. The number of payments or period to which the order applies; and
4. Each plan to which such order applies.

In addition, a domestic relations order may not alter such items as the amount or form of the benefits. Specifically, the domestic relations order must **not**:

- Require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan;
- Require the plan to provide increased benefits (determined on the basis of actuarial value);
- Require the payment of benefits to one alternate payee which are already required to be paid to another alternate payee under an order that has been determined to be a qualified domestic relations order.
- The law **does allow** payment:
 - for a payer who continues working for the employer, **or**
 - for a payer who chooses not to draw benefits at the earliest retirement date, **or**

- for an order that provides that payment may begin on a date as if the participant had retired; **and**
- benefits may be paid in any form in which the benefits will be paid to the participant except in the form of a joint survivor annuity to the alternate payee and his or her subsequent spouse.
- “Earliest retirement date” in this section means:
 - the earliest date on which the participant is entitled to receive monies under the plan; **or**
 - the later of the date the participant reaches the age of fifty (50) or the earliest date the participant could begin receiving monies if they separated from the employer.

In the early retirement situation, only the present value of the benefits actually accrued are considered and not the present value of an employer subsidy for early retirement. In addition, the interest rate specified in the plan should be used to determine the present value or, if the plan does not specify an interest rate, use 5%.

The elements listed in “Elements of a QDRO to collect support” relate to securing child support. In the event you want to secure alimony or spousal support you must pay particular attention to 26 USC 417 & 26 USC 401(a)(11) which address election options, length of marriage provisions and certain exceptions to other types of benefits.

QDRO PLAN ADMINISTRATOR RESPONSIBILITIES, DETERMINATION AND TIME LINES

Each plan administrator is required to:

- establish reasonable written procedures and administer distributions;
- promptly notify the participant and each person specified in a domestic relations order as entitled to payment of benefits of those written procedures upon receipt of the order;
- determine whether the order qualifies as a qualified domestic relations order within a reasonable period after receipt and notify the participant and each alternate payee; and
- allow an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

**Payment
Responsibility -
Pending QDRO_
Determination**

The plan administrator makes the determination of whether a domestic relations order meets the requirements of a Qualified Domestic Relations Order (QDRO). If the plan administrator determines that the order is not a QDRO, the FOC can obtain an order adjusted in the manner required by the administrator or contest the determination in the appropriate circuit court. During that determination time period, the plan administrator must separately account for the amounts that would have been paid to the alternate payee as if the order had been determined to be a QDRO. These amounts are called “segregated amounts”.

ERISA allows the plan administrator to take up to 18-months to determine whether a domestic relations order meets the requirements of a QDRO. The period begins the date on which the first payment would be required to be made under the domestic relations order and,

- if the order **is** determined to be a Qualified Domestic Relations Order, the plan **administrator must pay** the “segregated amounts” (including any accrued interest) to the **entitled person(s)**.
- if the order is determined **not** to be a Qualified Domestic Relations Order, or the issue is not resolved, the plan **administrator must pay** the “segregated amounts” (including any accrued interest) to the **person(s) who would have been entitled to the amounts if there had been no order**.
- if the order is determined to be a qualified domestic relations order after the 18 month period, then application of the order will be applied prospectively only.

To ensure that the “segregated amounts” are directed to the payee, the FOC must monitor what is occurring during the determination period. The FOC should work with the plan administrator to qualify a domestic relations order as a QDRO.

If the segregated monies are to be released to the participant, the FOC must be prepared to secure the monies through court action, (show cause, withholding, lien, etc.) if necessary, when the payer receives the monies from the plan administrator.

**ELEMENTS OF AN
EDRO TO COLLECT
CHILD SUPPORT**

An order is considered an Eligible Domestic Relations Order (EDRO) when the domestic relations order meets **all** of the following requirements:

1. The order states the name, last known address, and Social Security number of the participant **and** the alternate payee; (See Family Violence Exception);

2. The order states the amount or percentage of the benefit to be paid to the alternate payee, or how the retirement system is to determine the amount or percentage of the benefit to be paid;
3. The order states that it applies to the retirement system and that the retirement system is to make payments to the alternate payee as required under the Eligible Domestic Relations Order and the Eligible Domestic Relations Order Act 46 of 1991, MCL 38.1701-1711;
4. The order does not require the retirement system to provide a type or form of benefit not provided by the retirement system or a form of payment not provided by Act 46;
5. The order does not require the retirement system to provide an increased benefit determined on the basis of actuarial value;
6. The order does not require the payment of a benefit to an alternate payee that is required to be paid to another alternate payee under a previously filed Eligible Domestic Relations Order;
7. The order is filed before the participant's retirement allowance effective date.

EDRO PLAN ADMINISTRATOR RESPONSIBILITIES AND TIME LINES

Determination of Eligible Domestic Relations Order

Each retirement system must establish a reasonable procedure to determine if a domestic relations order contains all the elements required to be considered an Eligible Domestic Relations Order (EDRO).

Upon receipt of the domestic relations order the retirement system must:

1. Promptly notify the participant and the alternate payee that they have received the domestic relations order and enclose a copy of the procedures used in the determination process; and
2. Determine within a reasonable time whether the domestic relations order qualifies as an EDRO and notify the participant and the alternate payee of the decision.

If the retirement system determines the domestic relations order **is** an EDRO they must:

- **Begin the payment** of benefits on the **first day of the month following the month** in which the domestic relations **order** was **determined to be an EDRO**; or,
- The **first day of the month following the month** in which a **benefit is payable under the EDRO, whichever is later.**

If the retirement system determines the domestic relations order is **not** an EDRO:

- **Notify the participant** and the **alternate payee** that the **order does not qualify** as an EDRO and **specify** in the notice **why** the domestic relations **order does not qualify.**

A determination by the retirement system that a domestic relations order is not an EDRO does not prohibit a participant, alternate payee, or court from filing an amended domestic relations order with the retirement system.

MCL 38.1711 provides “A domestic relations order filed with the retirement system before the effective date of this act is considered an EDRO under this act if the retirement system is making payments under the domestic relations order on the effective date of this act or to the extent a domestic relations order is consistent with the provisions of this act.”

FAMILY VIOLENCE EXCEPTION & ALTERNATE PAYEE ADDRESS

Both State and Federal law prohibit disclosure of the custodial parent and child’s address when the possibility of domestic violence and/or abuse is identified. However, ERISA requires that QDROs contain the name and address of each participant and each alternate payee. Eligible Domestic Relations Order Act (EDROA) requires that the EDRO contain the name, address and social security number of the participant and the alternate payee. Special care must be taken in the completion of QDRO/EDRO documents where the Family Violence Indicator is set, or where there is any indication of domestic violence and/or abuse. *Follow the Special Procedures below.*

ERISA also requires that Qualified Medical Child Support Orders (QMCSOs) contain the name and address of the custodial parent as the alternate payee. Since the same conflict arose with these documents, ERISA was amended by 29 USC 1169(A)(3)(a) to allow the substitution of an official of a State or a political subdivision for the alternate payee name and address on a QMCSO.

INFORMATION PROTECTION RESPONSIBILITY

The Office of Child Support Act, 1971 PA 174, MCL 400.235(1), provides that information the Office of Child Support obtains will be available, to various other entities, for the purpose of administering, enforcing and complying with state and federal laws relating to child support and domestic relations matters.

MCL 400.235(2) bars the office from releasing address or other information about an adult who is responsible for a child, to another adult responsible for the child if the information is protected by court order or if the office has reason to believe that release of the information may result in physical or emotional harm to that adult or child.

In addition, The Uniform Interstate Family Support Act, 1996 PA 310, MCL 552.1320 provides that if disclosure of an address or other identifying information would unreasonably put at risk the health, safety or liberty of a party or child, the tribunal must order the information not be disclosed.

Specifically, MCR 3.206 (2) and (3) direct the information on the verified statement is confidential, except between the parties, unless a sworn affidavit explaining omission of the information is filed with the court. MCR 3.218 provides direction as to what is considered confidential within the Friend of the Court record.

Note: See exhibit 4DM 545X14; affidavit for non-disclosure for QDRO/EDRO.

**Special
Procedures for
Domestic Violence/
Abuse Cases**

Follow the procedure below when a Domestic Violence Indicator is associated with a draft QDRO/EDRO.

Alternate Payee

1. Request the support payee (the plan alternate payee) sign an affidavit that requests the Plan Administrator accept the substituted name/address of the local FOC as the alternate payee because of *case specific information; i.e., Family Violence Indicator, Court Ordered Non-Disclosure, etc.*
2. Once the affidavit is signed insert the local FOC name/address but do not include the custodial parent and child's name/address.
3. Reference the statutory citations listed above with regard to the protection of information. Request the logic the ERISA amendment to the Qualified Medical Child Support Order (QMCSO), found at 29 USC 1169(A)(3)(a), be extended to the QDRO/EDRO. (See Section on Family Violence Exception/page 10.)

4. If the document is not accepted, file a motion asking for the substitution of information within the QDRO/EDRO, citing the statutory provisions.

Participant

1. If the Family Violence Indicator pertains to the participant (FOC obligor), delete the participant's address from the alternate payee copy.
2. Mark the Plan Administrator copy with notification to communicate the participant address only to the child support agency and, if there is a non-disclosure order, include a copy and mark the address confidential.
3. If the document is not accepted, file a motion asking for the QDRO/EDRO with the specific relief requested.

**RELATED
WEBSITES**

http://www.acf.dhhs.gov/programs/cse/pol/cfr/95/303_100.htm

http://www.ssa.gov/OP_Home/ssact/title04/0466.htm

<http://www4.law.cornell.edu/uscode/20/ch18.htm1>

http://www.michiganlegislature.org/law/GetObject.asp?objName+552_602&queryid+1721106

<http://www.michiganlegislature.org/law/GetObject.asp?objName+38-1701&queryid+1721106>

<http://www.icle.org/sections/family/journal/97feb/tax.htm>

<http://caselaw.lp.findlaw.com/cascode/uscodes/29/chapters/18/toc.html>

Research Tip: When ERISA became law it was codified as part of Title 29 of the United States Code. By that time, Title 29 already contained codified versions of many other labor laws, so the section numbers assigned to the provisions of ERISA do not line up with the section numbering in the original Act. If the Title 29 section number is unknown, see the online cross reference link cross-reference table of ERISA in Title 29 (click) <http://www.benefitslink.com/erisa/crossreference.shtml>

LEGAL BASE

Title 29 United States Code Chapter 18 (Employee Retirement Income Security Act/ERISA)

29 USC 1001(23) (Retirement Equity Act of 1984/REA)

29 USC 1003(b)(1) & 1051 (REA)

29 USC 1169(A)(3)(a) (Qualified Medical Child Support Orders/
QMCSO)

26 USC 401(a)(11) (Qualified pension, profit-sharing, and stock bonus
plans)

26 USC 414(p) (Definitions and special rules/QDRO)

26 USC 417 (Definitions and special rules for purposes of minimum sur-
vivor annuity requirements)

42 USC 666(b)(8) (Statutorily proscribed procedures to collect child
support)

46 Public Act of 1991; MCL 38.1701 - 38.1711 (Eligible Domestic Rela-
tions Order Act/EDROA)

174 Public Act of 1971; MCL 400.235(1) & (2) (Office of Child Support
Act/OCSA)

295 Public Act of 1982; MCL 552.602(j)(ii) (Support and Parenting Time
Enforcement Act/SPTEA)

310 Public Act of 1996; MCL 552.1320 (Uniform Interstate Family Sup-
port Act/UIFSA)

MCR 3.206 (2) & (3) Pleading

MCR 3.218 Access to Friend of the Court Records