

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

EFFECTIVELY DRAFTING QDROS & LIKE ORDERS TO DIVIDE RETIREMENT PLANS IN DIVORCE

TYPES OF QDROS

BEFORE YOU BEGIN

OPERATIVE PARAGRAPHS - DB

OPERATIVE PARAGRAPHS - DC

CONTINGENCIES TO ACCOUNT FOR

LEARNING OBJECTIVES

- DETERMINE TYPE OF RETIREMENT PLAN AND TYPE OF QDRO NEEDED
- MOST COMMON MISTAKES TO AVOID RESULTING IN MALPRACTICE ISSUES
- WORD QDROS TO AVOID THE PLAN REJECTING QDRO, E.G. IF ANY, SHOULD THE PLAN, IF PERMITTED UNDER THE TERMS OF THE PLAN...
- DELINEATE ROLES OF THE ATTORNEY, PLAN ADMINISTRATOR, AND THE COURT TO THE CLIENT
- UNDERSTAND AND DISCUSS THE VARIOUS DISTRIBUTION OPTIONS WITH CLIENT

TYPES OF QDROS

- SEPARATE INTEREST VS. SHARED INTEREST – PRIVATE SECTOR
 - SEPARATE INTEREST APPLIES TO PRIVATE SECTOR PENSIONS PRIOR TO RETIREMENT
 - SHARED INTEREST APPLIES TO PRIVATE SECTOR PENSIONS AFTER DATE OF RETIREMENT AND NEARLY EVERY GOVERNMENT PENSION PLAN – FEDERAL, STATE, MILITARY
 - DC QDROS ARE ALMOST ALWAYS SEPARATE INTEREST QDROS – SEGREGATING AN ACCOUNT AS OF A SPECIFIC DATE SOON AFTER RECEIPT OF QDRO

Private Sector

Gov't Pensions

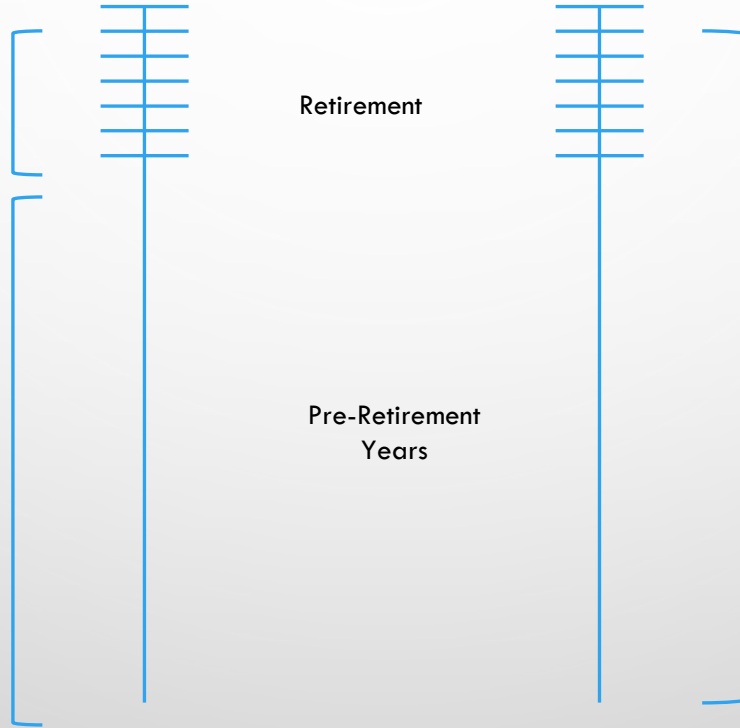
Shared
Interest
QDROs

Retirement

Shared Interest
QDROs or
functional
equivalent
Order Only

Separate
Interest
QDROs

Pre-Retirement
Years

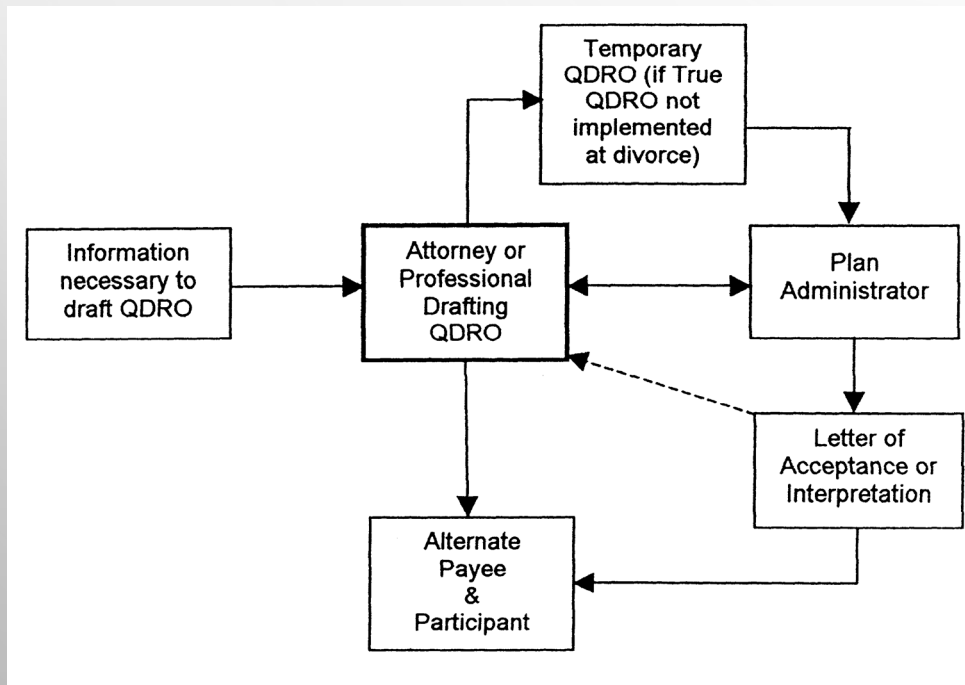


BEFORE YOU BEGIN

- POTENTIAL FOR OFFSETTING RETIREMENT ACCOUNTS AND LIKE PLANS (EQUALIZING)
 - PARTIES PREFER THIS AS IT MINIMIZES QDROS
 - DISADVANTAGES TO EQUALIZING – NOT ACCURATE WITH 401(K)S – NATURAL INCLINATION TO EQUALIZE MONTHLY PENSION BENEFITS FOR DEFINED BENEFIT PLANS – ALSO NOT ACCURATE
- DO YOU HAVE EXAMPLES?**
- DETERMINE TYPE OF PLAN AND KEEP IN MIND WHO RETAINED YOU
 - GOAL IS TO DRAFT QDRO CONSISTENT WITH AGREEMENT & MINIMIZE POTENTIAL LIABILITY

QDRO PROCESS

- MOST PRIVATE SECTOR PLANS WILL REVIEW “PROPOSED” QDROS AS A COURTESY OR FOR A FEE
- GOVERNMENT RETIREMENT PLANS WILL GENERALLY NOT REVIEW QDROS WITHOUT FIRST BEING ENTERED BY THE COURT (EXCEPTION BEING SOME STATE RETIREMENT PLANS)



SEPARATE INTEREST DEFINED BENEFIT PENSION PLAN

- ALTERNATE PAYEE'S AWARDED SHARE BASED ON THEIR LIFE EXPECTANCY
- AMOUNT WILL BE ADJUSTED BASED ON AGE AND GENDER BUT ACTUARIALLY THE SAME AS THE A/P'S AWARDED SHARE BASED ON THE PARTICIPANT'S LIFE EXPECTANCY

EXAMPLE:

GINGER VITUS (AGE 55) IS AWARDED 50% OF HER HUSBAND'S PENSION BENEFIT WHICH TOTALED \$1,000 PER MONTH. BECAUSE THE \$1,000 PER MONTH IS BASED ON THE HUSBAND'S AGE (AGE 60) AND GENDER THE 50% (OR \$500/MONTH) IS ADJUSTED DOWNWARD TO \$450 PER MONTH FOR GINGER BECAUSE SHE IS YOUNGER, THOUGH \$450 PER MONTH BASED ON GINGER'S LIFETIME IS THE ACTUARIAL EQUIVALENT OF \$500 PER MONTH BASED ON HER HUSBAND'S LIFETIME.

SAMPLE SEPARATE INTEREST PARAGRAPH OPERATIVE PARAGRAPH – DB QDROS

DIVIDING AN ACCRUED PENSION BENEFIT

THE PLAN ADMINISTRATOR IS DIRECTED TO RECOGNIZE A SEPARATE (INDEPENDENT) INTEREST FOR THE ALTERNATE PAYEE IN FIFTY PERCENT (50%) <OR OTHER PERCENTAGE, DOLLAR AMOUNT, OF THE ACCRUED BENEFIT OF THE PARTICIPANT UNDER THE PLAN AS OF THE DATE OF <FILING FOR DIVORCE, SEPARATION, OR DIVORCE>

PRORATA AT RETIREMENT

THE PLAN ADMINISTRATOR IS DIRECTED TO RECOGNIZE A SEPARATE INTEREST FOR THE ALTERNATE PAYEE EQUAL TO FIFTY PERCENT (50%) OF THE MARITAL PORTION OF THE PARTICIPANT'S MONTHLY PENSION BENEFIT UNDER THE PLAN **AS OF THE PARTICIPANT'S BENEFIT COMMENCEMENT DATE OR THE ALTERNATE PAYEE'S BENEFIT COMMENCEMENT DATE, IF EARLIER**. THE MARITAL PORTION SHALL BE DEFINED AS A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF MONTHS THE PARTICIPANT ACCRUED BENEFITS UNDER THE PLAN DURING THE MARRIAGE (FROM XXXX XX, XXX THROUGH XXXX XX, XXXX), AND THE DENOMINATOR OF WHICH IS THE TOTAL NUMBER OF MONTHS THE PARTICIPANT ACCRUED BENEFITS UNDER THE PLAN AS OF THE EARLIER OF THE DATE OF HIS COMMENCEMENT OF BENEFITS OR THE DATE OF THE ALTERNATE PAYEE'S COMMENCEMENT OF BENEFITS. SHOULD THE PLAN PROVIDE FOR ANY PERCENTAGE COST OF LIVING ADJUSTMENTS TO THE PARTICIPANT'S BENEFIT, IF ANY, SAID PERCENTAGE COST OF LIVING ADJUSTMENTS SHALL ALSO APPLY PROPORTIONATELY TO THE ALTERNATE PAYEE'S AWARDED BENEFIT IN THE SAME PERCENTAGE AMOUNT.

CONT. DB QDRO

SURVIVOR BENEFITS DURING RETIREMENT ARE NOT NECESSARY WITH A SEPARATE INTEREST HOWEVER, A QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY SHOULD BE CONSIDERED TO AVOID LOSS OF BENEFITS PRIOR TO A SEPARATE INTEREST BEING ESTABLISHED

THE ASSIGNMENT OF A SEPARATE INTEREST OF THE PARTICIPANT'S BENEFITS TO THE ALTERNATE PAYEE HEREIN SHALL NOT BE REDUCED, ABATED OR TERMINATED AS A RESULT OF THE DEATH, DISABILITY OR THE TERMINATION OF EMPLOYMENT OF THE PARTICIPANT. PLAN BENEFITS SHALL BE PAYABLE TO THE ALTERNATE PAYEE EVEN IF THE PARTICIPANT DIES PRIOR TO, OR AFTER, COMMENCEMENT OF ALTERNATE PAYEE'S BENEFIT, OR PRIOR TO THE COMMENCEMENT OF THE PARTICIPANT'S BENEFIT. THE ALTERNATE PAYEE SHALL BE DEEMED THE BENEFICIARY TO A PRE-RETIREMENT SURVIVOR ANNUITY EQUAL TO THE AMOUNT AWARDED IN PARAGRAPH 1 OF THIS ORDER UNTIL A SEPARATE INTEREST IS ESTABLISHED.

CAUTIONARY NOTES

- PRORATA APPROACH, APPLYING A MARRIAGE COVERTURE FRACTION AT RETIREMENT, WILL TYPICALLY PRODUCE A LARGER MARITAL PORTION THAN DETERMINING A TERMINATION (ACCRUED) BENEFIT AS OF THE DATE OF FILING, SEPARATION, OR DATE OF DIVORCE
- IF THE GOAL IS TO LIMIT A FORMER SPOUSE'S SHARE, ASSUMING YOU ARE RETAINED BY THE PLAN PARTICIPANT SPOUSE, OBTAIN AN ACCRUED MONTHLY PENSION BENEFIT AS OF THE DATE DEFINED AS THE END OF THE MARRIAGE AND AWARD A DOLLAR AMOUNT
- IF A DOLLAR AMOUNT (PER MONTH) IS AWARDED FROM A PENSION, VIA A QDRO, INCLUDE VERBIAGE SUCH THAT IF THE MONTHLY PENSION BENEFIT IS REDUCED FOR ANY REASON, LEGISLATIVE, BANKRUPTCY **EARLY RETIREMENT** OR BEYOND THE PARTICIPANT'S CONTROL THE FORMER SPOUSE'S SHARE (AS THE ALTERNATE PAYEE) SHALL BE REDUCED PROPORTIONATELY, E.G. PBGC

ANCILLARY BENEFITS TO PENSION BENEFITS

- COLAS – PART & PARCEL OF THE PENSION BENEFIT, I.E. FUNDED AS PART OF THE MONTHLY PENSION BENEFIT. AWARDING A PERCENTAGE OR FORMULA WHETHER IN AN MSA OR QDRO TENDS TO INCLUDE COLAS. AWARDING A DOLLAR AMOUNT PER MONTH DOES NOT IMPLY A COLA UNLESS LANGUAGE IS INCLUDED.
- SUBSIDIZED BENEFITS – TYPICALLY BASED ON ALL OF THE YEARS OF SERVICE A PORTION OF WHICH INCLUDES MARITAL YEARS – NEGOTIABLE THOUGH IF RETIRED SHOULD BE CONSIDERED

THE ALTERNATE PAYEE SHALL BE ENTITLED TO A PRO-RATA SHARE OF ANY EARLY RETIREMENT SUBSIDY PROVIDED TO THE PARTICIPANT ON THE DATE OF HIS RETIREMENT (INCLUDING ANY TEMPORARY, SUPPLEMENTAL PAYMENTS MADE TO THE PARTICIPANT). IN THE EVENT THE PARTICIPANT RETIRES EARLY AFTER THE ALTERNATE PAYEE HAS ALREADY COMMENCED BENEFITS ON AN UNSUBSIDIZED BASIS, THE AMOUNTS PAYABLE TO THE ALTERNATE PAYEE SHALL BE RECALCULATED ACCORDING TO THE PLAN ADMINISTRATOR'S PRACTICES AND THE PLAN'S ACTUARIAL PRINCIPLES, IN ORDER TO PROVIDE THE ALTERNATE PAYEE WITH A PRO-RATA SHARE OF SUCH SUBSIDY (INCLUDING A PRO-RATA SHARE OF ANY TEMPORARY SUPPLEMENT PAYABLE TO THE PARTICIPANT). THE ALTERNATE PAYEE SHALL ONLY RECEIVE HER PORTION OF ANY TEMPORARY SUPPLEMENT AS LONG AS THE PARTICIPANT IS ELIGIBLE FOR AND RECEIVING SUCH SUPPLEMENTAL PAYMENTS.

SHARED INTEREST QDRO – DB PENSION

- **AUTOMATIC IF RETIRED**
- RARE TO AWARD A SHARED INTEREST PRIOR TO RETIREMENT WITH PRIVATE SECTOR PLAN
 - ADVANTAGES TO THE PLAN PARTICIPANT – REVERSION **CAN SHARED INTEREST BE AWARDED ????**
 - DISADVANTAGE – COST TO PROVIDE SURVIVOR BENEFITS **PRIOR TO RETIREMENT IN PRIVATE SECTOR**

THE PLAN IS DIRECTED TO RECOGNIZE A SHARED INTEREST FOR THE ALTERNATE PAYEE IN THE MONTHLY BENEFIT OF THE PARTICIPANT UNDER THE PLAN TO THE EXTENT OF FIFTY PERCENT (50%) OF THE MARITAL PORTION OF SUCH BENEFIT CURRENTLY BEING PAID TO THE PARTICIPANT. THE MARITAL PORTION IS DEFINED AS A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF MONTHS THE PARTICIPANT ACCRUED BENEFITS UNDER THE PLAN DURING THE MARRIAGE (FROM XXX XX, XXXX THROUGH XXXX XX, XXXX THE DATE OF TERMINATION OF EMPLOYMENT) AND THE DENOMINATOR OF WHICH IS THE TOTAL NUMBER OF MONTHS THE PARTICIPANT ACCRUED BENEFITS UNDER THE PLAN. SUCH BENEFIT SHALL BE IMMEDIATELY PAYABLE ON A MONTHLY BASIS TO THE ALTERNATE PAYEE UPON THE PLAN'S ACCEPTANCE OF THIS ORDER AS A QUALIFIED DOMESTIC RELATIONS ORDER. SUCH BENEFIT SHALL CONTINUE TO BE PAID TO THE ALTERNATE PAYEE ON A MONTHLY BASIS UNTIL THE EARLIER OF THE DEATH OF THE PARTICIPANT OR THE DEATH OF THE ALTERNATE PAYEE.

RETIREMENT PLANS WITH DROP OR BACKDROP

- DROP – NOT A FUTURE BENEFIT NOR SEPARATE PLAN
- DATE OF ENTRY INTO DROP IS THE DATE OF RETIREMENT
 - LIMITED TO STATE AND MUNICIPAL PENSIONS
 - YEARS OF MARRIAGE & SERVICE ONLY UP TO DATE OF DROP
 - RETIRE UNDER TERMS OF PLAN BUT CONTINUING WORKING WHILE PENSION PAYMENTS ARE BANKED (DROP ACCOUNT)
 - ENTER DROP AT 55, TERMINATE EMPLOYMENT AT AGE 60, 5 YEARS OF PENSION PAYMENTS ACCUMULATED PLUS RECEIVE CONTINUED PAYMENTS FOR LIFE
 - DISADVANTAGE IS LOWER MONTHLY PENSION AT DATE OF DROP COMPARED TO MONTHLY PENSION THAT COULD HAVE ACCRUED
- BACDROP – OPPOSITE OF DROP – AGE 60 REQUEST PAYMENTS AS THOUGH RETIREMENT WAS IN PAST, E.G. AGE 55
- QDRO DEFINES A/P'S PERCENTAGE SHARE AS OF THE DATE OF DROP OF BOTH DROP AND CONTINUED MONTHLY PENSION

MOST COMMON MISTAKES TO AVOID

- IF YOU REPRESENT THE SPOUSE (A/P) DO NOT SPECIFY AN AGE WHEN THE SPOUSE IS TO RECEIVE THEIR SHARE (E.G. WIFE IS AWARDED \$1,000/MONTH AT HUSBAND'S AGE 65)
- INCLUDE PRE-RETIREMENT SURVIVOR BENEFITS UNTIL SEPARATE INTEREST IS ESTABLISHED
- THE LONGER YOU WAIT TO GET THE QDRO DRAFTED THE HIGHER THE POTENTIAL FOR PROBLEMS, E.G. DEATH OF ONE PARTY OR THE OTHER
- CORRESPONDENCE ACCOMPANYING QDROS SHOULD BE WRITTEN IN A WAY TO AVOID PLACING YOURSELF, AND/OR THE ATTORNEY THAT RETAINED YOU IN A LITIGIOUS POSITION (EXPECTATIONS)

YOU SAID....GET A DISTRIBUTION, I WOULDN'T LOSE MY BENEFITS

YOU WANT TO AVOID THE CLIENT COMING INTO YOUR OFFICE 10 YEARS FROM NOW ASKING WHAT HAPPENED TO MY MONEY?

DEFINED CONTRIBUTION PLAN (401K) QDROS – OPERATIVE PARAGRAPHS

- DEFINED CONTRIBUTION PLAN QDROS ARE SEEMINGLY EASIER TO DRAFT, HOWEVER, NOT WITHOUT ENCOUNTERING CERTAIN ISSUES
- WHAT IS THE INTENT BEHIND THE PARTIES' SETTLEMENT AGREEMENT?
 - % AS OF A SPECIFIC DATE
 - FLAT DOLLAR AMOUNT AWARDED AS AN OFFSET
 - FLAT DOLLAR AMOUNT AWARDED AS AN EQUALIZATION
 - TREATMENT OF LOANS ON THE ACCOUNT
 - EFFECTIVE DATE & GAINS/LOSSES

COMBINATION OF AWARDS, BREAK OUT SEPARATELY, E.G. 1ST AWARD MAY BE 50% AS OF DATE OF DIVORCE

2ND AWARD MAY BE \$ AS OF THE DATE OF SEGREGATION

CONT. DC QDRO ISSUES

- IF EFFECTIVE DATE IS INCLUDED, AS OPPOSE TO DATE OF SEGREGATION, PLAN WILL AWARD SHARES OR UNITS OF THE UNDERLYING INVESTMENTS (FUNDS) TO A SEPARATE ACCOUNT EQUAL TO THE % OR \$ AMOUNT AWARDED AS OF A SPECIFIC DATE
- VALUE OF THOSE SHARES OR UNITS AS OF THE DATE OF DISTRIBUTION OR TRANSFER WILL DICTATE WHETHER THERE ARE GAINS/LOSSES
- IF NO GAINS OR LOSSES ARE TO BE AWARDED, THE QDRO SHOULD STATE NO GAINS OR LOSSES TO THE DATE OF DISTRIBUTION OR TRANSFER (THOUGH BECAUSE SHARES ARE BEING TRANSFERRED AWARDED AMOUNT WILL BEGIN TO FLUCTUATE IN VALUE FROM THE DATE OF SEGREGATION TO THE DATE OF DISTRIBUTION OR TRANSFER
- TO COVER YOURSELF, INSTRUCT THE A/P THAT IF THEY ARE NOT COMFORTABLE WITH THEIR SHARE FLUCTUATING TO INSTRUCT THE PLAN (IN WRITING) TO ALLOCATE THEIR AWARDED SHARE TO THE MOST CONSERVATIVE INVESTMENT IN THE PLAN, E.G. MONEY MARKET FUND **SUGGEST PUTTING THAT IN A LETTER TO THE A/P?**
- ALMOST ALWAYS A FLAT DOLLAR AMOUNT AWARD WILL NOT RESULT IN THAT EXACT DOLLAR AMOUNT BEING TRANSFERRED
- RARE THAT A PLAN WILL ALLOW QDRO TO ONLY PAY FUNDS FROM ONE SUBACCOUNT

SAMPLE LANGUAGE FOR DC QDROS

THE AMOUNT ASSIGNED TO THE ALTERNATE PAYEE SHALL BE EQUAL TO FIFTY PERCENT (50%) OF ALL ACCOUNT BALANCES IN THE PLAN WITH RESPECT TO THE PARTICIPANT AS OF MONTH DAY, YEAR TO BE TAKEN PROPORTIONATELY FROM ALL ACCOUNTS AND/OR SUBACCOUNTS WITH RESPECT TO THE PARTICIPANT. THE AWARD SHALL BE ADJUSTED FOR ANY MARKET VALUE AND/OR INVESTMENT GAINS OR LOSSES AND ADMINISTRATIVE EXPENSES FROM JULY 24, 2020 TO THE DATE OF VALUATION FOR DISTRIBUTION TO THE ALTERNATE PAYEE. OUTSTANDING LOANS, IF ANY, SHALL BE INCLUDED IN THE CALCULATION OF THE ALTERNATE PAYEE'S SHARE WHEREBY ANY OUTSTANDING LOAN(S) WILL NOT REDUCE NOR ADVERSELY AFFECT THE ALTERNATE PAYEE'S SHARE.

THE AMOUNT ASSIGNED TO THE ALTERNATE PAYEE SHALL BE EQUAL TO \$_____ FROM THE ACCOUNT BALANCE(S) IN THE PLAN WITH RESPECT TO THE PARTICIPANT AS OF THE DATE OF SEGREGATION. THE AWARD SHALL BE ADJUSTED FOR ANY MARKET VALUE AND/OR INVESTMENT GAINS OR LOSSES AND ADMINISTRATIVE EXPENSES FROM THE DATE OF SEGREGATION TO THE DATE OF VALUATION FOR DISTRIBUTION TO THE ALTERNATE PAYEE. OUTSTANDING LOANS, IF ANY, SHALL NOT ADVERSELY AFFECT THE ALTERNATE PAYEE'S SHARE.

SUGGEST FOR THOSE DOLLAR AMOUNTS BE DEDUCTED TO EITHER DEDUCT THE AMOUNT FROM THE A/P'S SHARE OR DEDUCT IT FROM THE TOTAL BEFORE AWARDING A PERCENTAGE?

EFFECTS OF LOANS ON DC QDROS

- LOANS REDUCE THE AVAILABLE AMOUNT, HOWEVER, THE LOAN BALANCE CAN BE INCLUDED IN THE “CALCULATION” OF THE ALTERNATE PAYEE’S SHARE - **DOES NOT REDUCE THE A/P’S SHARE**
- “INCLUDED” MEANS THE PARTICIPANT’S SHARE IS AFFECTED BY THE LOAN AMOUNT
- “LOAN(S) SHALL “BE EXCLUDED” MEANS THE RESIDUAL AMOUNT IS DIVIDED ACCORDING TO THE AMOUNT AWARDED.
- CAUTION IS ADVISED IF AMOUNT AWARDED IS DIFFERENT OR LESS THAN 50% WHEN BOTH PARTIES ARE TO SHARE IN THE LOAN AMOUNT

DC QDROS – COMMON MISCONCEPTION

- HUSBAND AND/OR WIFE IS AWARDED 50% OF THE MARITAL PORTION OF THE WIFE'S/HUSBAND'S 401(K) BETWEEN DATE OF MARRIAGE AND DATE OF DIVORCE
- PLAN IS **NOT** GOING TO CALCULATE "MARITAL" PORTION.
- CALCULATIONS MUST BE DONE SEPARATELY
- BURDEN OF PROOF SHOULD BE ON THE PLAN PARTICIPANT TO PROVE AN ACCOUNT BALANCE EXISTED ON THE DATE OF MARRIAGE, E.G. IF THE HUSBAND/WIFE DOES NOT PROVIDE PROOF OF A PRE-MARITAL PORTION WITHIN 30 DAYS OF DIVORCE THE ENTIRE ACCOUNT IS TO BE CONSIDERED MARITAL

COVERTURE ADJUSTMENTS

- ACCEPTABLE TO USE COVERTURE ADJUSTMENT (MARITAL FRACTION) FOR DETERMINING MARITAL PORTION OF DEFINED BENEFIT PENSION PLAN – INCREASE IN MONTHLY PENSION ACCRUAL PRIMARILY DRIVEN BY YEARS OF SERVICE
- MARRIAGE COVERTURE FRACTION DOES NOT APPLY TO 401(K) PLANS
- EXAMPLE: 10 YEARS OF MARRIAGE, 20 YEARS OF SERVICE. ASSUME \$100,000 BALANCE ON DATE OF MARRIAGE (PRE-MARITAL PORTION), AN AVERAGE 10% RETURN, AND \$20,000/YEAR IN CONTRIBUTIONS, 12/31/2020 BALANCE = \$674,466.18
- USING A COVERTURE FRACTION: $10/20 \times \$674,466.18 = \$337,233.09$
- ACTUAL MARITAL VALUE: \$389,154.51

Exhibit A
 American Association of Certified QDRO Professionals
Jane Q. Sample - ABC Savings Plan
 as of December 31, 2020

Ending Yr/Quarter	Total Account Balance			Marital			Pre-Marital	
	Contributions	Earnings (+/-)	Balance	Contributions	Earnings (+/-)	Balance	Earnings (+/-)	Balance
1/1/10			\$ 100,000.00					\$ 100,000.00
12/31/10	\$ 20,000.00	\$ 11,000.00	\$ 131,000.00	\$ 20,000.00	\$ 1,000.00	\$ 21,000.00	\$ 10,000.00	\$ 110,000.00
12/31/11	\$ 20,000.00	\$ 14,100.00	\$ 165,100.00	\$ 20,000.00	\$ 3,100.00	\$ 44,100.00	\$ 11,000.00	\$ 121,000.00
12/31/12	\$ 20,000.00	\$ 17,510.00	\$ 202,610.00	\$ 20,000.00	\$ 5,410.00	\$ 69,510.00	\$ 12,100.00	\$ 133,100.00
12/31/13	\$ 20,000.00	\$ 21,261.00	\$ 243,871.00	\$ 20,000.00	\$ 7,951.00	\$ 97,461.00	\$ 13,310.00	\$ 146,410.00
12/31/14	\$ 20,000.00	\$ 25,387.10	\$ 289,258.10	\$ 20,000.00	\$ 10,746.10	\$ 128,207.10	\$ 14,641.00	\$ 161,051.00
12/31/15	\$ 20,000.00	\$ 29,925.81	\$ 339,183.91	\$ 20,000.00	\$ 13,820.71	\$ 162,027.81	\$ 16,105.10	\$ 177,156.10
12/31/16	\$ 20,000.00	\$ 34,918.39	\$ 394,102.30	\$ 20,000.00	\$ 17,202.78	\$ 199,230.59	\$ 17,715.61	\$ 194,871.71
12/31/17	\$ 20,000.00	\$ 40,410.23	\$ 454,512.53	\$ 20,000.00	\$ 20,923.06	\$ 240,153.65	\$ 19,487.17	\$ 214,358.88
12/31/18	\$ 20,000.00	\$ 46,451.25	\$ 520,963.78	\$ 20,000.00	\$ 25,015.37	\$ 285,169.02	\$ 21,435.89	\$ 235,794.77
12/31/19	\$ 20,000.00	\$ 53,096.38	\$ 594,060.16	\$ 20,000.00	\$ 29,516.90	\$ 334,685.92	\$ 23,579.48	\$ 259,374.25
12/31/20	\$ 20,000.00	\$ 60,406.02	\$ 674,466.18	\$ 20,000.00	\$ 34,468.59	\$ 389,154.51	\$ 25,937.42	\$ 285,311.67

MARRIAGE COVERTURE FRACTION VS. ACTUAL RESULTS – DC PLANS

- IF THE AVERAGE RATE OF RETURN WAS **15%**:

- TOTAL ACCOUNT BALANCE 12/31/2020 = \$977,883

- PRE-MARTIAL VALUE WOULD BE \$465,239

- MARITAL VALUE WOULD BE \$523,509

- MARITAL VALUE USING COVERTURE FRACTION WOULD BE \$454,374

**DOES THE QDRO CERTIFICATION
PROGRAM COVER THIS?**

- IF THE AVERAGE RATE OF RETURN WAS **5%**:

- TOTAL ACCOUNT BALANCE 12/31/2020 = \$462,273

- PRE-MARTIAL VALUE WOULD BE \$171,034

- MARITAL VALUE WOULD BE \$291,239

- MARITAL VALUE USING COVERTURE FRACTION WOULD BE \$231,137

DC QDROS FOR CHILD SUPPORT

- CHILD SUPPORT IS GENERALLY TAXABLE TO THE NON-CUSTODIAL PARENT (PLAN PARTICIPANT)
- PLANS WILL GENERALLY TAX THE RECIPIENT IF THE CUSTODIAL PARENT IS DEEMED THE ALTERNATE PAYEE RATHER THAN THE CHILD
- DESIRED AMOUNT MUST BE GROSSED UP TO ACCOUNT FOR THE PLAN'S MANDATORY WITHHOLDING TAX ($\$X1.25 = \$ \text{ LESS } 20\%$)
- ARREARAGES GENERALLY PAID TO THE CUSTODIAL PARENT
- DB PLANS CAN BE USED FOR CHILD SUPPORT ARREARAGES (MONIES OWED TO CUSTODIAL PARENT) IN EXCHANGE FOR NON-CUSTODIAL PARENT PAYING LUMP-SUM DIRECTLY. VALUATION REQUIRED. **WHAT'S THE AUTHORITY FOR USING QDROS FOR CHILD SUPPORT? I.R.C. AND ERISA**

THIRD PARTY QDRO ADMINISTRATORS

- FIDELITY

- COMPANIES CONTRACT SEPARATELY WITH FIDELITY TO ADMINISTER QDROS
- FIDELITY STATEMENT, WHERE FUNDS ARE HELD, SHOULD NOT IMPLY COMPANY ALSO HAS FIDELITY ADMINISTERING QDROS
- RESEARCH FIDELITY SYSTEM FOR COMPANY NAME

✔ Step 1 of 8:
Create a New QDRO

To create a new QDRO, enter the Employer Name and click Submit.

Enter Employer Name:

Submit

✔ Step 1 of 8:
Create a New QDRO

The following employer(s) in our file matched the employer(s) you entered. Please choose the correct employer.

Employer Name(s):

The Walt Disney Company

Yes - Continue

None of above- Re-enter Employer

CONT. USING FIDELITY SYSTEM

- FIDELITY DOES NOT REVIEW UNSIGNED ORDERS – NO PRE-APPROVAL PROCESS
- TRACKING SYSTEM
- ADMINISTER DC PLANS BUT WILL ENCOUNTER CASH BALANCE DB PLANS
- MOST WILL NOT ACCEPT COMBINATION OF AWARDS, E.G. 50% PLUS/MINUS \$ AMOUNT
- CHARGES QDRO FACILITATION FEES, E.G. \$350 WHEN USING FIDELITY SYSTEM OR \$1,200 IF PROPOSED QDRO IS NOT GENERATED ON THE FIDELITY SYSTEM

ALIGHT (FORMERLY AON-HEWITT) – LINCOLNSHIRE

- ANOTHER LARGE 3RD PARTY QDRO ADMINISTRATOR
- WILL REVIEW PROPOSED DRAFTS
- **WILL RESTRICT ACCOUNT/BENEFIT – BE MINDFUL IF IN-PAY STATUS/RETIRED (I.E. MAY NOT BE ADVISABLE TO SUBMIT PROPOSED DRAFT**
- WILL APPLY A COVERTURE FRACTION TO DC PLAN OR DB PLAN

QDRO LIABILITY ISSUES

- DERIVED FROM SETTLEMENT AGREEMENTS
 - ATTEMPTING TO AWARD A LUMP-SUM FROM A DEFINED BENEFIT PENSION PLAN
 - LACK OF DISCOVERY **ARE THERE MORE EXAMPLES?**
 - SURVIVOR BENEFITS **POINT ALSO IS THAT MSA PREVAILS**
 - NEGLECTING SUBSIDIZED BENEFITS IF PENSION ACCRUED ENTIRELY DURING THE MARRIAGE
 - NOT ADDRESSING ANCILLARY BENEFITS, COLAS, SUPPLEMENTAL PAYMENTS

CONT. QDRO LIABILITY ISSUES

- DERIVED FROM QDROS:
 - FAILING TO SUBMIT QDRO TO PLAN ADMINISTRATOR IN A TIMELY MANNER
 - INCORRECT VALUATION DATE
 - FAILING TO INCLUDE PRE-RETIREMENT SURVIVOR BENEFITS WITH SEPARATE INTEREST
 - QDRO NOT REFLECTING INTENT OF PARTIES OR MARITAL PORTION DEFINED IN A WAY INCONSISTENT WITH INTENT OR CASELAW
 - INCOMPETENCE – ATTORNEYS OWE A DUTY TO THEIR CLIENTS

QDROS FOR IRAS

- QDROS DO NOT APPLY TO IRAS THOUGH SOME CUSTODIAN DO REQUIRE A COURT ORDER SPECIFYING THE AMOUNT TO BE AWARDED AND IDENTIFYING THE ACCOUNT, IF NOT ADDRESSED IN THE SETTLEMENT AGREEMENT OR FINAL JUDGMENT
- SOME IRA CUSTODIANS REQUIRE A QDRO
- QUALIFIED RETIREMENT PLANS HAVE PLAN ADMINISTRATORS, IRAS DO NOT
- IRA CUSTODIAN
- REQUIRES MSA, FJ, AND 2 LETTERS OF INSTRUCTIONS AND AT TIMES A TRANSFER FORM

FEDERAL RETIREMENT PLANS IN DIVORCE

- CIVIL SERVICE RETIREMENT SYSTEM (<1984) VS FEDERAL EMPLOYEES RETIREMENT SYSTEM (>1984)
BOTH DEFINED BENEFIT PENSION PLANS
- FEDERAL EMPLOYEES MAKE SMALL CONTRIBUTIONS TO CSRS AND FERS BUT IS NOT THE VALUE
- COURT ORDER ACCEPTABLE FOR PROCESSING (COAP) FUNCTIONAL EQUIVALENT TO A QDRO
- THRIFT SAVINGS PLAN (TSP) – RETIREMENT BENEFITS COURT ORDER (RBCO)

MSA AND FJ CAN ACT AS A RBCO

LOANS ARE AN ISSUE

TSP BOARD WILL MAKE DISTRIBUTION WITHIN 60 TO 90 DAYS

CONT. FEDERAL RETIREMENT PLANS

- SIMILAR PLANS INCLUDE:
- JRS – JUDICIAL RETIREMENT SYSTEM FOR FEDERAL EMPLOYEES
- FSDS & FSPS – FOREIGN SERVICE PENSION SYSTEM – SIMILAR TO CSRS AND FERS
- CSRS OFFSET – REDUCED WHEN SOCIAL SECURITY COMMENCES
- MUNICIPAL PENSION PLANS WILL HAVE SIMILAR PLAN DESIGNED TO FERS OR CSRS

Q: FOREIGN SERVICE PLANS ADMINISTERED BY OPM? NO STATE DEPARTMENT

SPECIFICS ON FERS AND CSRS

- CSRS PREDATES SOCIAL SECURITY (CSRS ESTABLISHED AUGUST 1920) – LARGER CONTRIBUTIONS
- FERS APPLIES TO FEDERAL EMPLOYEES EMPLOYED AFTER JANUARY 1, 1987
- CSRS OFFSET APPLIES TO INDIVIDUALS BETWEEN 1984 AND 1987
- TSP CREATED IN 1987 BUT PARTICIPATION IS VOLUNTARY WHILE PARTICIPATION IN FERS OR CSRS IS MANDATORY (WARNING: CANNOT ONLY HAVE A TSP ACCOUNT)
- **COURT ORDER HANDBOOK FOR ATTORNEYS – SAMPLE PARAGRAPHS**
- GOVERNED UNDER 5 C.F.R. 838
- OFFICE OF PERSONNEL MANAGEMENT (OPM) HAS DEFAULTS IN PLACE (838.621 FOR EXAMPLE)

COURT ORDER DIVISION OF FERS AND CSRS

- CAN AWARD FLAT DOLLAR AMOUNT PER MONTH, PERCENTAGE, OR HYPOTHETICAL FORMULA. SAMPLE PRORATA BELOW APPLICABLE IN APPROX. 70% OF THE STATES AROUND THE COUNTRY
- FEDERAL EMPLOYEE <NAME> WILL BE ELIGIBLE FOR RETIREMENT BENEFITS UNDER THE FEDERAL EMPLOYEES RETIREMENT SYSTEM BASED ON EMPLOYMENT WITH THE UNITED STATES GOVERNMENT. <SPOUSE OF FEDERAL EMPLOYEE> IS ENTITLED TO A PRO RATA SHARE OF THE GROSS MONTHLY RETIREMENT ANNUITY THAT HAD ACCRUED DURING THE PARTIES' MARRIAGE AT RETIREMENT, INCLUDING ANY FERS SUPPLEMENTAL RETIREMENT ANNUITY PAYMENTS AND ANY ANNUITY BASED ON DISABILITY RETIREMENT. A PRO RATA SHARE AS DEFINED IN § 838.621 SHALL MEAN ONE-HALF OF THE FRACTION WHOSE NUMERATOR IS THE NUMBER OF MONTHS OF FEDERAL CIVILIAN AND MILITARY SERVICE THAT THE EMPLOYEE PERFORMED DURING THE MARRIAGE (_____ MONTHS), INCLUDING ANY MILITARY YEARS APPLIED AND/OR PURCHASED DURING THE MARRIAGE, AND WHOSE DENOMINATOR IS THE TOTAL NUMBER OF MONTHS OF FEDERAL CIVILIAN AND MILITARY SERVICE PERFORMED BY THE EMPLOYEE.

Q: % MEANS THAT IT IS FROM THE ACTUAL MONTHLY PENSION AMOUNT ?

CONT. FERS OPERATIVE PARAGRAPH

- FEDERAL EMPLOYEE <NAME> WILL BE ELIGIBLE FOR RETIREMENT BENEFITS UNDER THE FEDERAL EMPLOYEES RETIREMENT SYSTEM BASED ON EMPLOYMENT WITH THE UNITED STATES GOVERNMENT. <SPOUSE OF FEDERAL EMPLOYEE> IS ENTITLED TO ___% OF <OR \$_____ FROM> THE GROSS MONTHLY RETIREMENT ANNUITY THAT HAD ACCRUED DURING THE PARTIES' MARRIAGE AT RETIREMENT. THE UNITED STATES OFFICE OF PERSONNEL MANAGEMENT IS DIRECTED TO PAY <FORMER SPOUSE'S> SHARE DIRECTLY TO <FORMER SPOUSES NAME>, A SPOUSE/FORMER SPOUSE.
- % OR PRORATA AUTOMATICALLY INCLUDES COLAS. IF AWARDING DOLLAR MOUNT PER MONTH, AND WISH TO HAVE COLA, HAVE TO ADD VERBIAGE
- CAUTION IS ADVISED IF SURVIVOR BENEFITS ARE NOT AWARDED THE PAYMENTS SHOULD BE FROM THE SELF-ONLY ANNUITY
- IF CHILD SUPPORT OR ALIMONY MAY WANT TO AWARD A PORTION OF THE "NET ANNUITY".

Q: CAN YOU EXPLAIN THE DIFFERENCE BETWEEN SELF-ONLY, GROSS, AND NET?

CONT. FEDERAL RETIREMENT BENEFITS IN DIVORCE

- ACCUMULATED UNUSED SICK PAY AND ACCUMULATED UNUSED LEAVE ARE ALSO CONSIDERED MARITAL ASSETS IN MANY STATES
 - SICK PAY IS CONVERTED TO MONTHS AND ADDED TO THE FERS/CSRS FORMULA
 - WHILE ANNUAL LEAVE IS PAID IN A LUMP-SUM
- UP UNTIL THE PAST FEW YEARS OPM WOULD NOT PAY ANY PORTION OF THE FERS SUPPLEMENT TO A FORMER SPOUSE BUT NOW IS AUTOMATIC UNLESS THE MSA, FJ, OR COAP STATES OTHERWISE (FERS SUPPLEMENT IS AN ADDITIONAL MONTHLY PAYMENT IF RETIREMENT OCCURS PRIOR TO AGE 62)

Q: IS IT COMMON FOR OPM TO CHANGE THEIR POLICY? YES TSP AS AN EXAMPLE

CSRS VS. FERS

- CSRS PROVIDES LARGER MONTHLY PAYMENTS THAN FERS AS CSRS MEMBERS DO NOT CONTRIBUTE TO SOCIAL SECURITY.
- CONFLICTING CASE LAW AROUND THE COUNTRY WHERE AN ADJUSTMENT CAN BE MADE TO CSRS ANNUITY REPRESENTING THE ENHANCEMENT (OVER FERS) FOR NOT RECEIVING SOCIAL SECURITY, THIS WHILE THE OTHER SPOUSE MAY BE ENTITLED TO SOCIAL SECURITY
- FAR FEWER FEDERAL EMPLOYEES IN CSRS AND CSRS OFFSET AS COMPARED TO FERS
- **BOTH ALLOW UNUSED MILITARY YEARS WITH A DEPOSIT (PAYMENT) TO ENHANCE THE RETIREMENT ANNUITY. IF PAYMENT TO APPLY EQUIVALENT MILITARY YEARS ARE MADE WITH MARITAL FUNDS, ENHANCEMENT IS MARITAL EVEN IF ACTUAL MILITARY YEARS OCCURRED PRIOR TO THE MARRIAGE**

COAP IS ALWAYS “SHARED” INTEREST

- BECAUSE GOVERNMENT PENSIONS ARE TYPICALLY DIVIDED IN THE FORM OF A SHARED INTEREST ORDER, SURVIVOR BENEFITS SHOULD BE CONSIDERED, PRIOR TO AND DURING RETIREMENT TO SECURE THE FORMER SPOUSE’S SHARE
- IF NO SURVIVOR BENEFITS PAYMENTS TO FORMER SPOUSE WILL END AND SURVIVOR BENEFITS ATTRIBUTED TO ENTIRE RETIREMENT ANNUITY MAY BE PAID TO A NEW SPOUSE
- COST ASSOCIATED WITH SURVIVOR ANNUITY = 10% FOR FERS AND APPROXIMATELY 9.2% FOR CSRS
- SURVIVOR BENEFITS CAN BE APPORTIONED BETWEEN SPOUSE AND FORMER SPOUSE
- SURVIVOR BENEFIT COST CAN BE DEDUCTED FROM FORMER SPOUSE’S SHARE

SAMPLE SURVIVOR ANNUITY LANGUAGE

THE NON-MEMBER FORMER SPOUSE, <INSERT NAME>, IS TO BE DEEMED THE SURVIVING SPOUSE AND NOW FORMER SPOUSE, OF THE SURVIVOR ANNUITY PRIOR TO THE DATE OF RETIREMENT AND DURING RETIREMENT EQUAL TO THE MARITAL PORTION BASED ON A PRORATA SHARE FOR PURPOSES OF A PRE AND POST-RETIREMENT SURVIVOR ANNUITY UNDER THE TERMS OF THE PLAN, INCLUDING A PRORATA SHARE OF ANY LUMP-SUM DEATH BENEFIT (E.G. BASIC EMPLOYEE DEATH BENEFITS). AT THE TIME OF RETIREMENT, THE MEMBER/EMPLOYEE IS ORDERED TO NAME, AND THE OFFICE OF PERSONNEL MANAGEMENT IS ORDERED TO RECOGNIZE THE FORMER SPOUSE DEFINED BY THIS ORDER AS THE SURVIVING SPOUSE AND/OR FORMER SPOUSE TO A PRORATA SHARE OF THE MAXIMUM ALLOWABLE SURVIVOR ANNUITY. THE AMOUNT AWARDED TO THE FORMER SPOUSE IN THIS ORDER, SHALL NOT REDUCED BY ANY COST ATTRIBUTED TO SURVIVOR BENEFITS OF A SUBSEQUENT SPOUSE OF THE EMPLOYEE/MEMBER. SHOULD THE FORMER SPOUSE BECOME INELIGIBLE FOR A SURVIVOR ANNUITY, FOR WHATEVER REASON, FORMER SPOUSE'S SHARE SHALL BE BASED ON A SELF-ONLY (UNREDUCED) ANNUITY.

NOTE: REMARRIAGE OF A FORMER SPOUSE PRIOR TO THEIR AGE 55 SUSPENDS AND POSSIBLY FORFEITS SURVIVOR BENEFITS BUT DOES NOT AFFECT THE AWARD OF THE BASIC FERS ANNUITY (EXCEPTION: FORM OF SUPPORT)

TREATMENT OF NON-MEMBER FORMER SPOUSE'S SHARE OF THE ANNUITY

- IF PAYMENTS BEING AWARDED REPRESENT A **FORM** OF SUPPORT, TYPICALLY THE AMOUNT AWARDED REVERTS TO THE FEDERAL EMPLOYEE IF THE SPOUSE DIES FIRST.
- WHEN THE PENSION IS BEING DIVIDED AS MARITAL PROPERTY, IT IS CUSTOMARY TO ALLOW A SPOUSE TO HAVE THEIR PORTION PAID TO THE COURT OR TO THEIR ESTATE IN THE EVENT THEY PREDECEASE THE FEDERAL EMPLOYEE

“IF <NON-MEMBER FORMER SPOUSE> DIES BEFORE <FEDERAL EMPLOYEE>, THE UNITED STATES OFFICE OF PERSONNEL MANAGEMENT IS DIRECTED TO PAY <NON-MEMBER FORMER SPOUSE'S> SHARE TO HIS/HER ESTATE”

Q: IS SAMPLE LANGUAGE PROVIDED IN THE OPM COURT ORDER HANDBOOK?

BUT QUITE A BIT OF IT IS CONFUSING IF YOU DO NOT UNDERSTAND WHEN THESE THINGS APPLY

REFUND OF CONTRIBUTIONS

- CONTRIBUTIONS INTO FERS AND CSRS, LIKE MANY MUNICIPAL PENSIONS AS WELL, ARE UNRELATED TO THE AMOUNT AN EMPLOYEE SPOUSE WOULD RECEIVE AT RETIREMENT
- FOR EXAMPLE \$4,000 IN EMPLOYEE (ONLY) CONTRIBUTIONS WILL NOT FUND NOR PROVIDE FOR \$2,000 PER MONTH FOR THE REST OF ONE'S LIFE. PENSIONS IN THE PRIVATE SECTOR ARE TYPICALLY 100% EMPLOYER FUNDED THEREFORE CONTRIBUTIONS DO NOT EQUATE TO "VALUE" AS IT APPLIES TO DEFINED BENEFIT PENSION PLANS
- PARAGRAPH PROHIBITING AN ELECTION OF A REFUND OF EMPLOYEE CONTRIBUTIONS SHOULD BE CONSIDERED

"THE MEMBER, <NAME OF FEDERAL EMPLOYEE>, IS PROHIBITED FROM ELECTING A REFUND OF CONTRIBUTIONS"

Q: IS IT ALSO POSSIBLE TO PRORATE THE REFUND OF CONTRIBUTIONS IF FEDERAL EMPLOYEE IS NOT PROHIBITED FROM ELECTING A REFUND?

DISABILITY RETIREMENT VS. DISABILITY PAID FROM INSURANCE

- FERS AND CSRS DISABILITY RETIREMENT IS PAID FROM THE SAME SOURCE, FUNDED AS PART OF THE RETIREMENT PLAN. CAN BE DIVIDED BY A COAP
- UNDER FERS, DISABILITY RETIREMENT TERMINATES AND THE RETIREMENT ANNUITY RECALCULATED AT EMPLOYEE'S AGE 62
- CSRS RETIREMENT DISABILITY IS NOT RECOMPUTED AT AGE 62 (OFTEN THOUGHT OF AS EARLY RETIREMENT)
- RESEARCH THE CASE LAW IN YOUR STATE TO DETERMINE IF DISABILITY IS EXEMPT FROM EQUITABLE DISTRIBUTION OR IF DISABILITY RETIREMENT IS PARSED OUT BASED ON AMOUNTS ACCRUED

IF YOU REPRESENT OR ARE RETAINED BY THE FEDERAL EMPLOYEE

- DEFAULT PROVISIONS BY OPM ARE TO THE ADVANTAGE OF THE FORMER SPOUSE AND SOME ARE TO THE ADVANTAGE OF THE FEDERAL EMPLOYEE SPOUSE
- IF THE GOAL IS TO CUT OFF THE AMOUNT TO BE AWARDED AS OF THE DATE OF DIVORCE, AND NOT PRORATA AT RETIREMENT, THEN CALCULATE THE ACCRUED MONTHLY FERS OR CSRS ANNUITY
- OPM WILL NOT CALCULATE AN ACCRUED MONTHLY RETIREMENT ANNUITY
- OPM DOES NOT RECEIVE THE EMPLOYEE'S INFORMATION UNTIL THEY APPLY FOR RETIREMENT **Q: SUBPEONA OPM? NO**
- MAY AWARD A \$ PER MONTH BUT AS MENTIONED, INCLUDE VERBIAGE SUCH THAT ANY REDUCTION, FOR EARLY RETIREMENT OR CIRCUMSTANCES BEYOND THE CONTROL OF THE FEDERAL EMPLOYEE, THE FORMER SPOUSE'S SHARE SHALL BE REDUCED PROPORTIONATELY
- FOR THE FORMER SPOUSE'S SHARE TO REVERT TO THE FEDERAL EMPLOYEE SPOUSE, EITHER THE MSA, FJ, OR COAP CAN BE SILENT AS TO THE TREATMENT OF THE FORMER SPOUSE'S SHARE OR SPECIFY THAT IT REVERTS
- THE ABOVE IS APPLICABLE FOR MSA OR FJ LANGUAGE

DIVIDING MILITARY RETIRED PAY

- DIVISION OF RETIRED PAY GOVERNED UNDER THE UNIFORM SERVICES FORMER SPOUSE'S PROTECTION ACT (USFSPA) PASSED IN 1982
- KNOW THE DIFFERENCE BETWEEN RESERVIST/NATIONAL GUARD AND FULL-TIME ACTIVE
- **IF RESERVIST/NATIONAL GUARD REQUEST A CHRONOLOGICAL HISTORY OF POINTS**
- AMOUNTS CAN BE AWARDED AS MARITAL PROPERTY (50%), ALIMONY OR CHILD SUPPORT (65%)
- FOR PROPERTY DIVISION 10 YEARS OF MARRIAGE MUST OVERLAP WITH 10 YEARS OF SERVICE. DOES NOT AFFECT THE FORMER SPOUSE'S RIGHTS OR ENTITLEMENT ONLY THAT DFAS (MILITARY) WILL NOT MAKE DIRECT PAYMENTS. 10/10 RULE DOES NOT APPLY TO SUPPORT PAYMENTS
- DISABILITY, WHETHER CRDP OR VA WAIVER, ARE NOT DIVISIBLE AS MARITAL ASSETS BUT CAN BE GARNISHED FOR SUPPORT
- SUPREME COURT IN HOWELL V. HOWELL ADDRESSES DISABILITY/MILITARY – HOWEVER SETTLEMENT AGREEMENT WILL PREVAIL IF MEMBER AGREES TO RESTORE FORMER SPOUSE'S SHARE OF RETIRED PAY

RELATIVELY NEW CHANGES (NDAA)

- FOR DIVORCES OCCURRING AFTER DECEMBER 23, 2016, HIGHLY RECOMMENDED THAT THE MILITARY SUGGEST ORDER BE USED
- BLENDED MARITAL PORTION AFTER DECEMBER 23, 2016, PRORATA BUT HIGH-THREE USED IN CALCULATING MONTHLY RETIRED PAY LIMITED TO HIGH-THREE BASIC PAY AT THE TIME OF DIVORCE
- DIVORCES PRIOR TO DECEMBER 23, 2016 AWARD PRORATA SHARE, AWARD A DOLLAR AMOUNT, OR PERCENTAGE, PERCENTAGE NOT IMPLYING AS OF THE DATE OF DIVORCE BUT DURING RETIREMENT
- MILITARY (DFAS) WILL NOT COMPUTE AN ACCRUED MONTHLY RETIRED PAY
- DO NOT AWARD % AS OF THE DATE OF DIVORCE BECAUSE OF THE 20 YEAR CLIFF VESTING

MILITARY OPERATIVE PARAGRAPH

- RESERVIST/NATIONAL GUARD: **Q: MUST USE POINTS IF RESERVIST NOT YEARS/MONTHS?**

THE PETITIONER/NON-MEMBER FORMER SPOUSE IS AWARDED A PERCENTAGE OF THE RESPONDENT/MEMBER'S DISPOSABLE MILITARY RETIRED PAY, TO BE COMPUTED BY MULTIPLYING 50% TIMES A FRACTION, THE NUMERATOR OF WHICH IS _____ RESERVE RETIREMENT POINTS EARNED DURING THE PERIOD OF THE MARRIAGE, DIVIDED BY THE RESPONDENT/MEMBER'S TOTAL NUMBER OF RESERVE RETIREMENT POINTS EARNED. (PRORATA BASED ON POINTS)

ON THE DATE OF DEFAULT DECREE OF DISSOLUTION OF MARRIAGE, <INSERT DATE>, THE MEMBER'S MILITARY RETIRED PAY BASE (HIGH 3) WAS \$_____ AND THE MEMBER HAD _____ RESERVE RETIREMENT POINTS.

MILITARY COURT ORDER PROVISIONS TO CONSIDER

- MOST LIABILITY IS INCURRED BY THE ATTORNEY REPRESENTING THE NON-MEMBER FORMER SPOUSE
- VA WAIVER (DISABILITY) REDUCES DISPOSABLE RETIREMENT PAY DOLLAR-FOR-DOLLAR <50%, >50% MAY QUALIFY FOR CONCURRENT PAY
- ADD VERBIAGE TO SETTLEMENT AGREEMENT, IF REPRESENTING NON-MEMBER FORMER SPOUSE, REGARDING:
 - VA WAIVER OR CRSC (COMBAT RELATED SPECIAL COMPENSATION) AND IF THE MEMBER SHOULD PAY FORMER SPOUSE DIRECTLY FOR ANY REDUCTIONS TO THE FORMER SPOUSE'S SHARE
 - BENEFITS TAKEN IN LIEU OF MONTHLY RETIRED PAY OR IN ADDITION TO RETIRED PAY, E.G. VSI OR SSB

SURVIVOR BENEFIT PLAN (SBP)

- MAXIMUM SURVIVOR BENEFIT IS 55% OF DISPOSABLE RETIRED PAY, HOWEVER, ANY AMOUNT CAN BE USED AS THE BASE AMOUNT OR LESSER AMOUNT
- SBP COST CANNOT BE DEDUCTED FROM FORMER SPOUSE'S SHARE

NON-MEMBER FORMER SPOUSE SHALL BE DEEMED THE IRREVOCABLE SOLE BENEFICIARY OF THE MAXIMUM ALLOWABLE SURVIVOR BENEFIT PLAN (SBP) THROUGH MEMBER'S MILITARY RETIREMENT AND THE MEMBER SHALL EXECUTE SUCH PAPERWORK AS IS REQUIRED TO MAKE OR EXTEND THE ELECTION OF NON-MEMBER FORMER SPOUSE AS SAID BENEFICIARY.

- GENERAL RULE OF THUMB: SBP FOR A FORMER SPOUSE NEEDS TO BE REQUESTED WITHIN 1 YEAR OF THE DIVORCE

CALCULATING MILITARY RETIRED PAY

- AWARD % OR \$ AMOUNT FROM RETIRED PAY DURING RETIREMENT
- MILITARY WILL **NOT** COMPUTE ACCRUED MONTHLY PORTION AS OF ANY SPECIFIC DATE
- IF RETAINED BY MEMBER, AND GOAL IS TO CUT-OFF ACCRUAL OF RETIRED PAY AS OF A SPECIFIC DATE, MUST CALCULATE RETIRED PAY ANNUALLY
 - RESERVIST/NAT'L GUARD POINTS/360 X AVERAGE 3YR BASIC PAY X 2.5%
 - FULL-TIME ACTIVE: 2.5% X AVG. HIGH-THREE BASIC PAY X YEARS OF SERVICE

DIVIDING PENSIONS & EXECUTIVE DEFERRED COMP PLANS THAT DO NOT ACCEPT QDROS

- MUNICIPAL PENSIONS OFTEN DO NOT ACCEPT QDROS – EXEMPT FROM ERISA
- EXECUTIVE DEFERRED COMPENSATION PLANS ALSO DO NOT TYPICALLY ACCEPT QDROS, AGAIN EXEMPT FROM ERISA
- CREATE A QDRO LIKE ORDER, ORDERING THE PARTIES TO PERFORM THE SAME FUNCTION AS THE PLAN ADMINISTRATOR
- DISADVANTAGE: ONLY ENFORCEABLE ON THE PARTIES AND NOT THE PLAN
- FOR EXECUTIVE DEFERRED COMP PLANS, BUILD LANGUAGE INTO THE SETTLEMENT AGREEMENT OR QDRO-LIKE ORDER, AND EAR MARK A/P'S FUNDS TO CERTAIN MUTUAL FUNDS WITHIN THE PLAN TO AVOID COMPLICATED CALCULATIONS LATER ON WHEN DISTRIBUTION IS MADE. **BE COGNIZANT OF TAXES INCURRED BY THE PLAN PARTICIPANT**

CONT. QDRO–LIKE ORDERS

- FOR NON-QUALIFIED DEFINED BENEFIT PENSION PLANS, ADDRESS SAME ISSUE AS IN QDRO.
- PLAN ONLY KNOWS TO TAX PLAN PARTICIPANT – ALLOW FOR TAX ADJUSTMENT TO A/P'S SHARE
- IN FORMAL JUDGMENT ORDER PLAN PARTICIPANT TO INSTRUCT THE PLAN TO ALLOCATE, BY DIRECT DEPOSIT, "X" DOLLARS OR % TO A SEPARATE ACCOUNT
- TYPICALLY PLAN WILL ONLY MAKE DIRECT DEPOSIT TO JOINT ACCOUNT – FROM JOINT ACCOUNT A/P CAN DRAFT HIS/HER SHARE TO THEIR OWN ACCOUNT

CERTIFIED QDRO SPECIALIST – CQS DESIGNATION

- IF YOU NEED TO RETAIN A QDRO PROFESSIONAL EXAMINE THEIR BACKGROUND
- AMERICAN ASSOCIATION OF CERTIFIED QDRO PROFESSIONALS
- AACQP PROGRAM ADDRESSES: ALL TYPES OF QDROS OR LIKE ORDERS

QDRO PREPARATION/DRAFTING

MSA LANGUAGE

QDRO DISTRIBUTIONS – IRA ROLLOVERS – REVENUE ENHANCER

MILITARY, FEDERAL, STATE AND MUNICIPAL PENSIONS

INEXPENSIVE COURSE FOR THE KNOWLEDGE

- MOST IMPORTANTLY – HOW TO PROVIDE EXPERT WITNESS TESTIMONY



CERTIFIED QDRO ANALYST COURSE

- TO BE RELEASED IN 2021
 - MORE IN-DEPTH ANALYSIS
 - CASE STUDIES
 - ROLE & RESPONSIBILITIES OF PLAN ADMINISTRATORS – FACILITATING QDROS
 - IDEAL FOR CPAS, FINANCIAL PROFESSIONALS, BENEFITS/HR SPECIALIST
- 

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