



### Too Many QDROs?

**SITUATION:** Several years ago, our 401(k) plan received a domestic relations order that allocated 40% of employee A's plan benefits to his ex-wife B. The plan administrator reviewed the order and determined that it was a "qualified" domestic relations order (QDRO). Since then, A has married and divorced again. We recently received another domestic relations order allocating 20% of A's plan benefits to his second ex-wife C.

**QUESTION:** Can the second domestic relations order also qualify as a QDRO?

**ANSWER:** Yes it can. The U.S. Department of Labor (DOL) recently issued regulations clarifying certain issues regarding the order and timing of domestic relations orders. The new regulations clarify that a domestic relations order can be a QDRO even if it is issued after the employee's death, divorce, or annuity starting date or after a previous domestic relations order or QDRO, assuming it meets all of the other legal requirements for qualification.

**DISCUSSION:** The pension law generally prohibits a qualified plan from paying a participant's benefit to anyone other than the participant or the participant's designated beneficiaries. However, the law contains an exception allowing payment to an alternate payee — a spouse, former spouse, child, or other dependent — if the plan has received a valid QDRO.

A domestic relations order is a judgment, decree, or other order under a state domestic relations law that relates to child support,

alimony, or marital property rights. To be considered a QDRO, the order must contain specific information. For example, it must specify the amount or percentage of benefits the alternate payee is to receive or specify how that amount or percentage is to be determined.

The law also sets forth certain terms that a QDRO may *not* contain. For example, a QDRO may not require a plan to pay a benefit or offer a payment option that is not included in the terms of the plan or require the plan to provide increased benefits. In addition, a QDRO may not require payment of a benefit to an alternate payee when the benefit is already payable to a different payee based on an earlier QDRO. In your plan's situation, the second order did not allocate any of B's benefits to C.

**COMMENT:** The new regulations include examples that clarify how the QDRO rules apply to specific situations. You can find the regulations at [www.dol.gov/ebsa/regs/fedreg/final/ebsa-rule-20070307.htm](http://www.dol.gov/ebsa/regs/fedreg/final/ebsa-rule-20070307.htm). The examples are at the end.

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## Got Participation?

According to data released by the U.S. Bureau of Labor Statistics in 2006, about half of American workers (54%) have access to an employer-sponsored defined contribution retirement plan, such as a 401(k) plan. Of these employees, 79% participate in their employers' plans. However, access to a plan and participation rates can vary depending on company and employee characteristics.

How does your participation experience compare? Take a look at the table.

Characteristic	Employers with Plan	Participation Rate
All employees	54%	79%
White collar	65%	82%
Blue collar	53%	77%
Service	30%	65%
Full-time	63%	80%
Part-time	25%	65%
Paid < \$15 per hour	43%	71%
Paid \$15 or more per hour	69%	85%
1 to 99 employees	41%	81%
100 or more employees	70%	77%
Union	50%	86%
Nonunion	55%	78%

## The Latest on Plan Loans

Many 401(k) plans offer participant loans as a way to encourage employees to participate. The reasoning is that, if employees — particularly younger, lower paid employees — know they can access the money in their plan accounts if they really need to, they will be more comfortable contributing to the plan. And this reasoning is solid. Plans that offer loans generally have high participation rates.

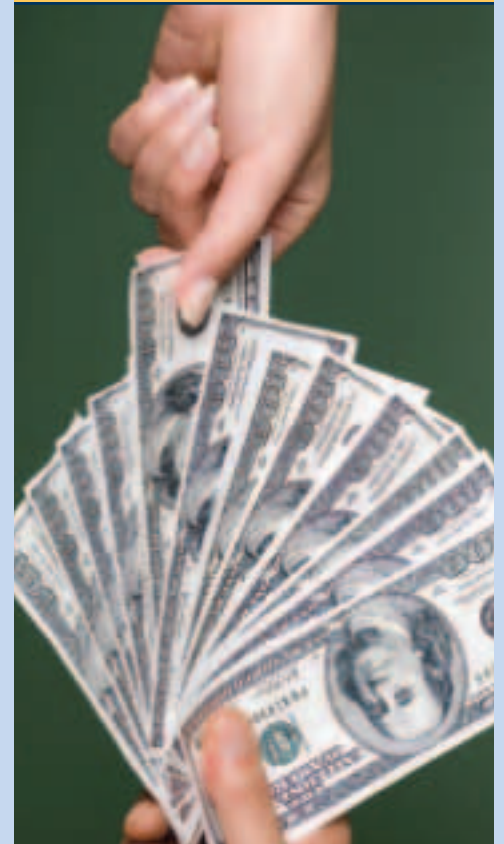
But some employers have concerns that employees will overuse the loan option, causing extra administrative work for the employer and possibly hampering the employees' ability to successfully save for retirement. Information from two recent studies may alleviate this concern.

Surveys from the Employee Benefit Research Institute/Investment Company Institute (EBRI/ICI) and the Profit Sharing/401(k) Council of America (PSCA)\* both show that, while about 85% of the plans/employers surveyed have a plan loan feature, fewer than a quarter of employees who are eligible for a loan actually had outstanding loans (19% and 24.5% respectively). According to the EBRI/ICI study, employees in their 20s (11%) and 60s (10%) were least likely to have taken a loan. The surveys also revealed that average outstanding loan balances were relatively low (\$6,821 and \$7,407 respectively).

The PSCA study also found that many employers implement restrictions to control plan loans. For example, 84.5% of employers surveyed charged borrowers some kind of loan fee; 94.7% imposed a minimum loan amount (most commonly between \$500 and \$1,000); and fewer than half (47.9%) allowed employees to have more than one plan loan outstanding at a time.

\* EBRI/ICI Participant-Directed Retirement Plan Data Collection Project and PSCA's 49th Annual Survey of Profit Sharing and 401(k) Plans, reflecting 2005 plan experience

**Plans that offer loans generally have high participation rates.**



## New Guidance on Roth Distributions

Now that the provisions allowing employees to make designated Roth contributions to 401(k) plans are permanent, more employers are considering adding this feature to their plans. If your plan offers Roth contributions or you are thinking about offering them, you'll want to be familiar with the recently issued final regulations on distributions from Roth 401(k) accounts. Here are some key points made in the regulations.

**How are Roth 401(k) account distributions taxed?** The tax treatment depends on whether the distribution is "qualified." With a qualified distribution, the employee does not include any amount in income for federal tax purposes. Generally, a distribution is qualified if it is made (1) after the employee reaches age 59½ or on account of disability or death *and* (2) after a five-year period has elapsed. If a distribution is not qualified, the portion of the distribution allocable to account earnings is subject to income tax and possibly to a 10% early withdrawal penalty.

**Do the regulations address how the five-year period is determined?** As with the proposed regulations issued in early 2006, the final regulations say the five-year period begins on the first day of the employee's tax year in which the employee first makes a designated Roth contribution to the employer's plan and ends when five consecutive tax years have passed. A contribution that is returned as an excess deferral, excess contribution, or "permissible withdrawal" from an automatic contribution arrangement (after 2007) does *not* begin the five-year period.

**What about rollovers?** Employees may make tax-free rollovers of eligible rollover distributions from a designated Roth account to either a designated Roth account with another employer's plan or to a Roth IRA. However, rollovers of otherwise nontaxable amounts to another designated Roth account must be accomplished through a direct rollover. If an eligible rollover distribution is instead paid to the employee, the employee could still roll over the entire amount (or any portion of it) to a Roth IRA within 60 days.

If a nonqualified distribution is paid to the employee and less than the entire amount is rolled over, the part that is rolled over is deemed to consist first of the portion of the distribution attributable to account earnings. It is possible for an employee to roll over the taxable portion of a distribution from a designated Roth account into a designated Roth account under another plan within 60 days. However, the recipient plan would have additional reporting requirements.

**Is the employee's five-year period of participation carried over to the account receiving the rollover?** It depends. For direct rollovers to another employer's plan, the starting date of the five-year period generally carries over to the new plan account. If the direct rollover is made to an alternate payee's or spouse beneficiary's designated Roth account, the employee's starting date carries over unless the receiving account had an earlier starting date. For indirect rollovers of taxable amounts to a designated Roth account under another plan, the employee's period of participation under the distributing plan generally does not carry over. The taxable year the rollover is completed begins a new five-year period for a participant who has made no prior designated Roth contributions to that plan.

With rollovers to Roth IRAs, the starting date depends on whether the employee has an existing Roth IRA. If the employee does not, the five-year period begins with the year the rollover is completed. If the employee already has a Roth IRA, the five-year period for the amounts attributable to the rollover contribution is the same as the period for the previously established Roth IRA.

**When do the new regulations take effect?** They are effective April 30, 2007, and generally apply to tax years beginning on or after January 1, 2007.

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.



## RECENT DEVELOPMENTS In Benefit Plans

**Section 415 Final Regulations.** Final regulations issued by the IRS in April provide an extensive update of the Internal Revenue Code Section 415 guidance originally issued in 1981. The regulations cover limitations on benefits and contributions for both defined benefit and defined contribution plans — including when amounts received after severance from employment are considered compensation for Section 415 purposes and when these amounts can be deferred.

Generally, these regulations apply to limitation years beginning on or after July 1, 2007.

**Knowledge Gap.** The 2007 Retirement Confidence Survey of the Employee Benefit Research Institute reveals that a large number of workers remain misinformed about some important retirement facts. Two examples: Only a small minority know the age at which they will be eligible for full Social Security benefits. And 62% expect to receive pension income, but only 41% say

they or their spouses have a defined benefit plan.

**Plan Participation.** Younger employees are significantly less likely than older groups to participate in tax-advantaged plans, according to a recent CCH/Harris Interactive survey. Although 56% of employees surveyed contributed to an employer-sponsored retirement plan, only 28% of those 18 to 24 years of age were contributing.

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