

Simplifying the QDRO Process Through Common-Sense Disclosure Rights for Former Spouses

Summary

This paper proposes to simplify the process by which former spouses of participants in ERISA¹-regulated retirement plans obtain the documents and benefits information necessary to produce a properly drafted *Qualified Domestic Relations Order (QDRO)*. A QDRO is a court order that allows an ERISA plan participant's earned retirement benefits to be divided between the participant and his or her spouse at divorce or legal separation. The QDRO process is complex, and drafting an effective QDRO requires access to plan documents and information including, among other things, the type of plan, the amount of the participant's accrued benefit or account balance, the participant's vesting status, the plan's QDRO submission procedure, and the forms of distribution the plan offers.

Retirement plans will typically not provide this information to former spouses whose divorces have been finalized, but who have not yet obtained a QDRO, and participants themselves are frequently not forthcoming with these documents.² This means that, for divorced or separated spouses who have not yet procured a QDRO, the only means of acquiring these needed documents are obtaining a subpoena or seeking assistance from the U.S. Department of Labor. These unnecessarily cumbersome processes could be largely avoided if ERISA regulations were simplified to grant former spouses with existing benefit rights under a divorce

¹ The Employee Income Retirement Security Act of 1974, 29 U.S.C. § 1001, *et seq.*

² In cases of domestic violence, it may also not be safe for the participant's former spouse to contact the participant to request documents or other benefit information.

decree or separation order, but who do not yet have QDROs, the right to receive documents and information directly from a retirement plan.

Because this issue overwhelmingly impacts women – particularly older and economically disadvantaged women – I have chosen the pronoun “she” to refer to former spouses struggling to obtain documents and information or to otherwise navigate the QDRO process.³

Current Law

Federal law allows state divorce courts to divide ERISA retirement benefits at divorce or legal separation.⁴ This process is quite complicated, and requires much coordination between the involved parties and the retirement plan. In addition to obtaining a divorce decree or separation order that divides the retirement benefit, the parties must also obtain a properly-drafted, court-approved domestic relations order (or “DRO”) that explains in detail how the retirement benefit must be divided, while also conforming to the unique substantive and procedural rules of the specific retirement plan at issue.⁵ Often, parties will wait to obtain a DRO until after the divorce or separation is final, limiting their ability to make changes to the terms of the divorce if a problem is later encountered.⁶ The parties must then submit the DRO to the retirement plan for

³ There is a dearth of meaningful public research or data regarding the QDRO process, including the number of QDROs produced, the average cost to obtain a QDRO, the ability of divorce parties to obtain a QDRO, or the rate at which individuals entitled to retirement benefits pursuant to a divorce decree actually obtain a QDRO. *See* Gov’t Accountability Off., GAO-20-541, *Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings* (2020). Therefore, where I have been unable to find other source material for this paper, I have relied on original research derived from my involvement in a multi-year project to identify, raise awareness of, and ultimately eliminate obstacles to the fair and equitable division of retirement benefits at divorce. This work has involved group and individual conversations with diverse stakeholder communities that include retirement industry professionals; ERISA attorneys; family law attorneys, judges, court staff and mediators; and community organizations that advocate on behalf of women, survivors of domestic violence, older Americans, people of color, immigrants and members of the LGBT community. Please also note that I am submitting this paper in my personal capacity and not on behalf of an employer or any other organization.

⁴ 29 U.S.C. § 1056(d)(3)(B)(ii).

⁵ *Id.* at § 1056(d)(3)(G).

⁶ While a divorce decree can theoretically serve this function, it is often the case that a divorce decree will not go into sufficient detail, that the parties will need to obtain a separate DRO in addition to the divorce decree, and that

approval, and only after the plan has deemed the order *qualified* is it recognized as a valid QDRO.⁷ Retirement plans are required to place a hold of up to eighteen months on benefit distributions to the participant while they determine whether a DRO is qualified.⁸ A former spouse with a right to benefits under a QDRO is called an *alternate payee*.⁹

ERISA expressly lays out the requirements for a valid QDRO. The order must include the amount or percentage of the benefit to be paid to the former spouse and the manner in which that amount or percentage is to be determined, the number of payments or period to which the order applies, and the names of each retirement plan to which the order applies.¹⁰ The order may not require the plan to provide any type or form of benefit or option it would not otherwise provide, cannot require the plan to pay out an amount greater than the actuarial equivalent of what the participant earned, and cannot require the plan to pay benefits out to a former spouse that were already awarded to a different former spouse by another QDRO.¹¹ ERISA also allows for survivor benefits to be awarded to a former spouse pursuant to a QDRO.¹²

To obtain a QDRO that meets these various requirements, a large amount of information must be known about the rules of each of the retirement plans in which a divorce party has

parties will wait to obtain a DRO until after the divorce is final. See, e.g., 29 C.F.R. § 2530.206(c) (clarifying that the timing of the submission of the prospective QRDO should not impact the determination as to whether the order is qualified); *Wilson v. Wilson*, 116 Ohio St. 3d 268, 271 (2007) (explaining that a divorce decree is final regardless of whether the QRDO has been issued); *Potts v. Potts*, 142 Md. 448, 459 (2002) (noting that QRDOs can often be issued years after a divorce is final); but see Alaska’s Family Court Self Help Center, available at: <http://www.courts.alaska.gov/shc/family/shcqdro.htm#5> (last accessed April 28, 2020) (website for Alaska’s Family Court Self Help Center stating that whether a judge will grant a divorce absent a QDRO “depends” and that some judges will and some won’t issue a divorce without one).

⁷ 29 U.S.C. § 1056(d)(3)(G).

⁸ *Id.* at § 1056(d)(3)(H).

⁹ *Id.* at § 1056(d)(3)(K). Note that this provision defines an *alternate payee* as a spouse with benefit rights pursuant to a domestic relations order, whereas § 1056(d)(3)(J) confers the rights of a beneficiary to an alternate payee under a *qualified* domestic relations order. The statute therefore defines both former spouses with DROs and with QDROs as *alternate payees*. However, Department of Labor regulations and publications distinguish between an alternate payee (a former spouse who has obtained a QDRO) and a *prospective* alternate payee (a former spouse who has not obtained a DRO or who has obtained a DRO that is not yet qualified). See, e.g., 29 C.F.R. § 2520.104a-8(b)(2).

¹⁰ 29 U.S.C. § 1056(d)(3)(C).

¹¹ *Id.* at § 1056(d)(3)(D).

¹² *Id.* at § 1056(d)(3)(F).

participated, as well as the specific benefits earned by the participant in each of those plans. To gather this information, one must at least have access to the Plan Document, to the Summary Plan Description, and to participant-specific benefits statements to understand the value of the benefit being divided.¹³ In a defined benefit plan, the QDRO-drafter will also need to know about the various forms of benefit available under the plan, such as early retirement benefits, level income options and optional forms of survivor benefit. In a defined contribution plan, a QDRO-drafter will need to know whether any loans have been taken out against the participant's account and other specific account information to be able to specify a fair and logical valuation date. In both types of plan, a QDRO-drafter will need to know whether any distributions have already been taken and whether other QDROs are already in place from the participant's other marriages, if applicable.

Critically, this information can usually only be obtained from either the participant or the retirement plan. Unfortunately, if a participant is uncooperative – which is common – the plan is the former spouse's only other source for this information. Retirement plans often resist providing the information necessary to obtain a QDRO, unless legally required to do so, because retirement plans and their sponsoring employers can face liability for wrongfully disclosing a participant's private benefit information to an unauthorized party.¹⁴ And while retirement plans

¹³ See 29 U.S.C. §§ 1102, 1022, 1025; 29 C.F.R. § 2520.102-2.

¹⁴ Retirement plans providing disclosures through electronic media must take appropriate measures to protect the confidentiality of personal information relating to a participant's accounts and benefits, including measures designed to preclude unauthorized access to that information by unintended individuals. 29 C.F.R. § 2520.104b-1(c)(1)(i)(B). Furthermore, the potential for retirement plans, fiduciaries and employers to be held liable for breaches of participants' confidential information is an issue of increasing concern, including liability not only for fiduciary breach under ERISA but also under other federal laws and state common law claims not preempted by ERISA. See, e.g., Cowart, Greta, et al., "What Retirement Plan Sponsors and Employers Need to Know About Cybersecurity Risk and Liabilities," *Tax Management Compensation Planning Journal*, Vol. 45, 4, p.122 (2017) Available at <https://www.naspp.com/NASPPAttachmens/NASPP/8c/8cb57a49-85bf-493d-89bb-1184946abd80.pdf> (last accessed April 28, 2020). See also Utz, John, *Privacy Risks Beyond HIPAA: Retirement and Other Non-Health Benefit Plans* (2018), <http://www.utzlattan.com/wp-content/uploads/2018/01/Privacy-Risks-Beyond-HIPAA-Retirement-and-Other-Non-Health-Benefit-Plans-2-1.pdf> (last accessed April 28, 2020).

must provide documents to plan participants and plan beneficiaries,¹⁵ which include *current* spouses of plan participants,¹⁶ only those former spouses who are entitled to a share of a participant's benefits under a QDRO are granted the same rights as participants and beneficiaries to plan documents and information under ERISA.¹⁷

This means that many former spouses face a Catch 22 scenario. A former spouse does not have an ERISA right to procure the plan documents and information necessary to obtain a QDRO, but must obtain a QDRO to procure the needed plan documents and information. In other words, there often occurs a period following the divorce and before a DRO is obtained during which the former spouse of the participant has no right under ERISA to obtain the plan documents or information necessary to draft an effective DRO. This has the potential to bring the entire QDRO process to a halt, sometimes permanently.

A former spouse in this situation is left with two options, neither of which is easy to pursue and both of which can leave a former spouse without complete relief. She can either obtain a subpoena, or she can enlist the help of the U.S. Department of Labor. Obtaining a subpoena requires an open court proceeding, however the exact parties in need of subpoenas are former spouses whose divorces or legal separations are no longer open, because they are no longer plan beneficiaries with document rights. Furthermore, during a divorce, an attorney, mediator, family court self-help center or court staff may be available to help guide the spouse as she attempts to obtain documents from the participant or the plan. This support network is gone, however, once the divorce is over and the parties are no longer in court, and so the former spouse

¹⁵ 29 U.S.C. § 1024(b).

¹⁶ 29 U.S.C. § 1002(8); 29 U.S.C. § 1055(d)(1).

¹⁷ 29 U.S.C. § 1056(d)(3)(J); 29 U.S.C. § 1056(d)(3)(K).

may not even know what a subpoena is or how to obtain one. Nor is it easy or efficient to open a new court matter simply for the purpose of obtaining documents.

As to the second option, federal regulations grant the Department of Labor the authority to make document requests to retirement plan administrators on behalf of plan participants and beneficiaries who have already requested such documents and not received them.¹⁸ For the purposes of this regulation, the definition of a participant or beneficiary includes a former spouse regardless of whether she has obtained a QDRO.¹⁹ Thus, federal law grants former spouses the ability to request that the Department of Labor obtain, on their behalf, the documents needed to draft an effective domestic relations order. It does not, however, grant them the independent right to seek plan documents on their own. Meanwhile, former spouses are typically unaware of and therefore do not take advantage of their right to request help from the Department.²⁰

At the same time, the Department of Labor's Employee Benefits Security Administration has produced a thorough, informative publication titled *QDROs: The Division of Retirement Benefits Through Qualified Domestic Relations Orders*. This publication suggests that, in fact, former spouses without QDROs *do* have an independent right to plan documents and information, stating that "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."²¹ It goes on to state that plans may require the alternate payee to provide information establishing that the disclosure request is legitimate. This is a reasonable, common-

¹⁸ 29 C.F.R. § 2520.104a-8(a)(ii).

¹⁹ *Id.* at (b)(2).

²⁰ Based on my experience working directly with impacted former spouses, legal services providers and other stakeholders in the QDRO process, the existence of this provision is largely unknown.

²¹ Question 2-1 (page 14). Available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/qdros.pdf> (last accessed May 31, 2010).

sense interpretation of the law that would help to simplify the QDRO process for former spouses of plan participants, removing serious obstacles that prevent them from obtaining the retirement benefits to which they already have a legal right per their divorce decrees.

Unfortunately, this publication is not a regulation or formal guidance and has no binding legal effect. The inclusion of the Department's view in its QDRO publication thus appears to have had little tangible effect as it remains common plan practice to refuse to provide information and documents to former spouses who have not yet obtained a QDRO.

Reasons for Change

Currently, a former spouse seeking the documents and information necessary to be able to obtain a well-drafted QDRO must enlist the aid of a governmental authority, whether that authority is a state court or the U.S. Department of Labor. The requirement that former spouses – who are largely unrepresented by attorneys²² – obtain this kind of governmental assistance to procure basic plan documents creates a stressful extra step for any former spouse and could potentially be a permanent obstacle to benefits access for former spouses facing disadvantages that make it hard to access these resources. These disadvantages may include low education, mental incapacity, illness, poor English skills, abusive or violent interference by the participant former spouse, a culturally instilled fear of government common in many marginalized communities, or a simple inability to navigate government bureaucracy.²³

²² While the exact percentage varies from jurisdiction to jurisdiction, at least two thirds or more of divorces in the United States involve at least one self-represented party. Herman, Madelynn, National Center for State Courts, Self-Representation Pro Se Statistics (2006), Available at <https://web.archive.org/web/20120504035215/http://www.ncsconline.org/wc/publications/memos/prosestatsmemo.htm> (last accessed April 29, 2020).

²³ Based on conversations with representatives of diverse stakeholder communities, including groups that advocate for the rights of women, older Americans of color, the LGBT community, immigrant communities and survivors of domestic violence.

Divorced and separated women are already dramatically more likely than men or married women to experience poverty in old age because of a lack of adequate retirement savings.²⁴ The system should not place additional obstacles in their way. Furthermore, to the extent that former spouses actually know about and take advantage of their right to request help from the Department of Labor, this method has the potential to create extra, unnecessary work for the Department's staff and it is not guaranteed that plans will be responsive.

Simplification Resulting from Proposal

Prospective alternate payees should be granted an independent right to receive documents and information directly from retirement plans upon written request, provided that they can show their request for information is part of a good faith effort to obtain a QDRO. Their disclosure rights should be similar to that of beneficiaries, participants, and alternate payees. They should not be required to provide a subpoena or to enlist the help of the Department of Labor.

Legislation or regulations should describe both those documents that retirement plans must provide to a prospective alternate payee as well as the requirements that retirement plans may impose on a prospective alternate payee to prove that the request is in good faith. Furthermore, the Department of Labor should produce a simple, one-page model document request form that retirement plans can modify and provide to prospective alternate payees. Rather than placing the onus on the prospective alternate payee to identify the exact documents and information she is seeking, retirement plans in receipt of a completed document request form

²⁴ Jennifer Erin Brown et al., Nat'l Inst. on Ret. Sec., *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, at 1, 18 (2016), <http://laborcenter.berkeley.edu/pdf/2016/NIRS-Women-In-Retirement.pdf> (last accessed April 28, 2020). Tyler Bond, et al., Nat'l Inst. On Ret. Sec., *Still Shortchanged: An Update on Women's Retirement Preparedness*, at 9 (2020), <https://www.nirsonline.org/wp-content/uploads/2020/04/Still-Shortchanged-Final.pdf> (last accessed May 31, 2020).

should automatically provide a packet of documents and information containing those documents and pieces of information prescribed by law. The prospective alternate payee should be given the option to receive the document packet in hard copy, electronically, or both, and the packet should include copies of:

- The Department of Labor’s existing QDRO publication (or, if the former spouse has opted to receive documents electronically, how to locate it),
- The current Plan Document, or, if the participant has left covered employment, the Plan Document in place during the participant’s last hour of service,
- The relevant Summary Plan Description,
- The plan’s QDRO submission procedure,
- The participant’s latest benefits estimate,
- If relevant, a description of any loans, hardship withdrawals or prior distributions the participant may have taken,
- Any QDRO already attached to the participant’s benefit, redacted to protect the privacy of the other former spouse, and
- The plan’s model QDRO, if it has one.

If plan administrators are aware that the participant is likely to have participated in multiple related retirement plans – for instance, if the same plan sponsor offers both a defined benefit plan and a 401(k) plan – plan administrators should also include in the packet the names of and contact information for those other plans.

Retirement plans should be authorized to protect the participant’s private benefits information by imposing reasonable requirements on the prospective alternate payee to prove that the document request is in good faith. For instance, retirement plans could request that the

prospective alternate payee attach a copy of the divorce decree or separation agreement to the document request form, or a court filing in connection with an ongoing divorce or separation matter. Plans should be allowed to request reasonable proof of the former spouse's identity and to require the prospective former spouse to sign, under penalty of perjury, a statement that the information is being sought for the purposes of obtaining a QDRO.

Retirement plans should also be required to obtain affirmative authorization from the former spouse before notifying the participant that documents and information are being provided to her, and should under no circumstances ever disclose the former spouse's contact information or location to the participant. Domestic violence is extremely common in the United States,²⁵ and it follows that some document requests will come from survivors of abuse by a participant, who may try to retaliate if notified that the former spouse is seeking to obtain a share of the retirement benefit.²⁶ Furthermore, receipt of a formal document request from a prospective alternate payee should trigger the plan to place an eighteen-month hold on benefit distributions as though a DRO has been submitted, in order to protect the former spouse's share of the benefit from being withdrawn by the participant before a QDRO can be finalized.²⁷ This would prevent a scenario in which a participant, aware that a former spouse has sought information and documents necessary to begin the DRO drafting process, takes a benefit distribution to keep the former spouse from accessing it after a QDRO is obtained.

²⁵ One in four women and one in seven men have experienced severe intimate partner violence in the U.S. and fifteen percent of U.S. women have been injured by intimate partner violence. National Domestic Violence Hotline, <https://www.thehotline.org/resources/statistics/> (last accessed April 28, 2020).

²⁶ Domestic partner abuse tends to escalate when the abuser feels a loss of control over the abused partner, such as when the abused partner seeks to become more independent. Seventy-five percent of serious injuries from intimate partner violence occur when the abused partner ends the relationship, making the divorce process an especially dangerous time for the former spouse. National Domestic Violence Hotline <https://www.thehotline.org/2018/09/28/escalation/> (last accessed April 28, 2020).

²⁷ See 29 U.S.C. § 1056(d)(3)(H).

Implications for Employee/Participant Rights

The simplification proposed in this paper does not increase or reduce the substantive rights of any participant or beneficiary to retirement benefits. Rather, it promotes the enforcement of the existing benefit rights of former spouses who have already been awarded a share of a participant's benefit at divorce pursuant to state law, but which they have often struggled to exercise because of the unnecessarily complex bureaucracy of the existing QDRO process.

Any concerns about participants' right to keep their benefits information confidential should be mitigated by requirements that retirement plans require prospective alternate payees to demonstrate that they are requesting documents in good faith. Furthermore, to the extent that participants may experience a decrease in the retirement benefits they themselves receive in retirement, it is important to note that in all of these cases state domestic relations law will have already determined that the former spouse is legally entitled to a share of the benefit, and so that share of the benefit does not belong to the participant in the first place. Additionally, the former spouse in this case will often have given up other rights or assets – such as a home – in exchange for a share of a participant's retirement benefit. Failing to later enable the alternate payee to enforce her right to that share of that benefit would unjustly enrich the participant.

Likelihood of Enactment or Implementations

As the simplification proposed in this paper does not increase or reduce the substantive benefit rights of any party, but only increases the ability of prospective alternate payees to enforce an existing substantive right already granted to them under ERISA and state domestic relations law, this simplification is unlikely to provoke major objections on substantive policy

grounds. The most likely resistance to this simplification will relate to the potential increase in administrative burden on retirement plans because it imposes new disclosure requirements. However, the changes proposed in this paper would not require retirement plans to generate new kinds of disclosure, except for a simple document request form. Rather, it would only require plans to generate additional copies of existing disclosures and provide them under new circumstances. Legally requiring retirement plans to provide certain documents and information to former spouses would also shield them from liability for making those disclosures.

Furthermore, it is important to note that better disclosure to prospective alternate payees has the potential to save retirement plans time, effort and administrative costs in the long term. Retirement plans have reported that more than half of DROs submitted to them could not be qualified because they lacked basic information,²⁸ which means that plans had to issue an explanation of denial and process resubmissions in a large number of QDRO matters. My discussions with retirement plan administrators have revealed that QDRO administration is one of the most expensive aspects of plan administration, often requiring them to hire outside services providers or law firms to handle DRO submissions or maintain in-house staff who specialize in QDRO matters.²⁹

If there was an automatic, streamlined process by which plans provided relevant documents and information to former spouses seeking a QDRO, former spouses would be more likely to obtain well-drafted DROs that actually meet the plan's requirements the first time, benefiting both the former spouse and the retirement plan. This is particularly the case if automatically provided documents include a model QDRO already drafted to meet the

²⁸ GAO-20-541, 24-26.

²⁹ See also, *Id.*, 29-30, recommending that the Department of Labor produce a checklist of needed documents and information both to increase the likelihood of QDRO success for alternate payees and reduce administrative burden for retirement plans.

qualification requirements – and which could be filled in by an attorney – rather than requiring that a new DRO be drafted from scratch.

Originality

Many have remarked on the cumbersome nature of the QDRO process, there have been recent legislative efforts at the federal level to make funding available for non-profit organizations that provide QDRO services and education,³⁰ and the General Accounting Office conducted a report in 2020, cited herein, recommending changes to the way the Department of Labor collects QDRO data and educates the public about QDROs.³¹ However, I am not aware of any current, significant public debate regarding the specific disclosure rights of divorced spouses to benefits information that is not connected to my own work on this subject.

Required Statutory or Regulatory Changes

Existing statutory language providing for the existence of QDROs, determining who can be an alternate payee, and establishing the rights of alternate payees culminates by expressly authorizing the Secretary of Labor to prescribe regulations under that paragraph in consultation with the Secretary of the Treasury.³² The Department of Labor has already taken the position in its publication on QDROs that Congress intended prospective alternate payees to have a right to obtain documents from a retirement plan. Regulations already exist authorizing prospective alternate payees who have not yet obtained a QDRO to enlist the Department's help to obtain documents and information needed in connection with the QDRO process, reflecting a similar

³⁰ See Women's Retirement Protection Act of 2019, H.R. 2005, 116th Cong. § 8 (2019).

³¹ See GAO-20-541, *supra*.

³² 29 U.S.C. § 1056(d)(3)(N).

position. Implementing the suggested changes in this paper would simply formalize the Department's existing position, but in a way that provides meaningful, concrete results for former spouses of plan participants.

The Department has also promulgated past regulations clarifying the rights of prospective alternate payees based on its belief that Congress did not intend to exclude them. When the Labor Department published its 2003 final rule on blackout notices to participants and beneficiaries, it explained it had based a substantive drafting decision on its belief that Congress did not intend to limit a particular exclusion "only to those restrictions arising after a determination that a domestic relations order is qualified," stating that it had accordingly amended its proposed rule "to clarify the application of the exclusion to restrictions imposed during the pendency of a QDRO determination."³³

There is therefore no reason for which the Department should not have already codified as a regulation its existing position that prospective alternate payees have disclosure rights under ERISA. Language enacting the proposed simplification above could be added under 29 C.F.R. § 2520.104b-1, which contains the Department's general regulations on disclosure and electronic disclosure; under 29 C.F.R. § 2520.104a-8, which describes the right of participants and beneficiaries to seek the Department's assistance in obtaining documents and information from a plan, and which already expressly defines prospective alternate payees as having the same rights as beneficiaries; or under 29 C.F.R. § 2530.206, which regulates the time and order of issuance of domestic relations orders.

Yet, despite having the authority to enact regulations protecting the rights of former spouses to retirement plan disclosures, and despite already taking the informal position that

³³ 68 F.R. 3715, 3721.

prospective alternate payees have a right to plan documents and information, the Department of Labor has not taken regulatory action to ensure former spouses actually receive the documents and information they need to obtain a QDRO. Given the impact that the proposed simplification could have for potentially thousands of spouses every year and the Department's apparent hesitancy in addressing this by formal regulation, a statutory change would be ideal, as it has greater potential to achieve effective solutions quickly by conferring to former spouses of plan participants an immediate right to disclosures and information upon enactment.

One statutory option includes adding language at the end of 29 U.S.C. § 1056(d)(3)(J), which currently states that an alternate payee under a qualified domestic relations order has the same rights as a plan beneficiary, granting similar disclosure rights to prospective alternate payees seeking documents and information in connection with a good faith effort to obtain a QDRO. Statutory language expressly acknowledging former spouses' disclosure rights could go into effect immediately, as the proposed changes would not require retirement plans to generate any information or documents they do not already produce. This new legislation could also impose deadlines for the Department of Labor to generate a model document request form and promulgate any further explanatory guidance needed.

Conclusion

The QDRO process sits at the nexus of two complex, confusing, stressful processes: divorce, and retirement preparation. This process is made even more stressful and complicated by unnecessary bureaucratic hurdles to disclosure that negatively impact a variety of stakeholders in the QDRO process. These hurdles make life more difficult for former beneficiaries, create unnecessary work for the Department of Labor, confuse family law

practitioners, and result in unnecessary administrative burden and a lack of legal clarity for retirement plans. These hurdles do not exist as a matter of policy but through a combination of imprecise legislative drafting and regulatory inaction. The legislative solution proposed in this paper would provide needed legal clarity to all involved parties, reduce the administrative burden for numerous stakeholders, and ensure that former spouses of plan participants receive the benefits to which they already have a legal right and that they need for a more financially secure retirement.