



Report to Ranking Member of the  
Committee on Health, Education, Labor,  
and Pensions, U.S. Senate

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# RETIREMENT SECURITY

## DOL Could Better Inform Divorcing Parties About Dividing Savings

Accessible Version

July 2020

# GAO Highlights

Highlights of [GAO-20-541](#), a report to the Ranking Member of the Committee on Health, Education, Labor, and Pensions, U.S. Senate

## Why GAO Did This Study

A domestic relations order (DRO) is a court-issued judgment, decree, or order that, when qualified by a retirement plan administrator, can divide certain retirement benefits in connection with separation or divorce and as such provide crucial financial security to a former spouse. DOL has authority to interpret QDRO requirements. GAO was asked to review the process for obtaining QDROs. This report examines what is known about (1) the number of QDRO recipients, (2) the fees and other expenses for processing QDROs, and (3) the reasons plans do not initially qualify DROs and the challenges experts identify regarding the QDRO process.

To conduct this work, GAO analyzed available data, and a total of 14 responses from two surveys of large private sector plans and account record keepers, and interviewed 18 experts including practitioners who provide services to divorcing couples.

## What GAO Recommends

GAO is recommending that DOL (1) explore ways to collect information on QDRO-related fees charged to participants or alternate payees, and (2) take steps to ensure information about the process for obtaining a QDRO is accessible. DOL generally agreed with our recommendations.

View [GAO-20-541](#). For more information, contact Kris Nguyen, (202) 512-7215 or [NguyenTT@gao.gov](mailto:NguyenTT@gao.gov).

July 2020

## RETIREMENT SECURITY

### DOL Could Better Inform Divorcing Parties About Dividing Savings

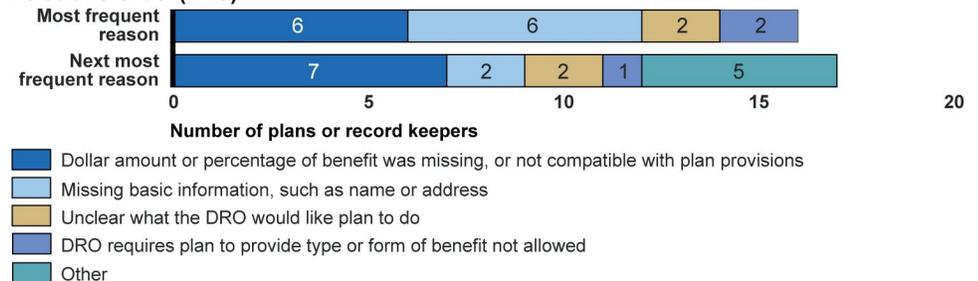
#### What GAO Found

Although more than one-third of adults aged 50 or older have experienced divorce, few people seek and obtain a Qualified Domestic Relations Order (QDRO), according to large plan sponsors GAO surveyed. A QDRO establishes the right of an alternate payee, such as a former spouse, to receive all or a portion of the benefits payable to a participant under a retirement plan upon separation or divorce. There are no nationally representative data on the number of QDROs, but plans and record keepers GAO interviewed and surveyed reported that few seek and obtain QDROs. For example, the Pension Benefit Guaranty Corporation administered retirement benefits to about 1.6 million participants, and approved about 16,000 QDROs in the last 10 years. GAO's analysis of other survey data found about one-third of those who experienced a divorce from 2008 to 2016 and reported their former spouse had a retirement plan also reported losing a claim to that spouse's benefits. Many experts stated that some people—especially those with lower incomes—face challenges to successfully navigating the process for obtaining a QDRO, including complexity and cost.

Individuals seeking a QDRO may be charged fees for preparation and review of draft orders before they are qualified as QDROs and, according to experts GAO interviewed, these fees vary widely. These experts cited concerns about QDRO review fees that they said in some cases were more than twice the amount of typical fees, and said they may discourage some from pursuing QDROs. Department of Labor (DOL) officials said the agency generally does not collect information on QDRO fees. Exploring ways to collect and analyze information from plans on fees could help DOL ensure costs are reasonable.

Divorcing parties who pursue QDROs often had orders not qualified due to lacking basic information, according to plans and record keepers we surveyed (see figure).

**Plan Administrators and Record Keepers Reported Reasons for Not Qualifying a Domestic Relations Order (DRO)**



Source: GAO survey of plan administrators and recordkeepers. | GAO-20-541

DOL provides some information to help divorcing parties pursue QDROs. However, many experts cited a lack of awareness about QDROs by the public and said DOL could do more to make resources available to divorcing parties. Without additional outreach by DOL, divorcing parties may spend unnecessary time and resources drafting orders that are not likely to be qualified, resulting in unnecessary expenditures of time and money.

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### Abbreviations

DB	defined benefit
DC	defined contribution
DOL	Department of Labor
DRO	domestic relations order
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
FAQs	frequently asked questions
HRS	Health and Retirement Study
IRA	individual retirement account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
QDRO	qualified domestic relations order
QJSA	qualified joint and survivor annuity
QPSA	qualified preretirement survivor annuity
PBGC	Pension Benefit Guaranty Corporation
SCF	Survey of Consumer Finances
SIPP	Survey of Income and Program Participation
SPD	summary plan description

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July 31, 2020

The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

Dear Senator Murray:

Many workers in the United States are at risk of falling short of savings goals to maintain their pre-retirement standards of living,<sup>1</sup> a deficit that can be exacerbated by divorce and disproportionately affect women. Previous GAO work has shown that across almost all population groups, a life change such as divorce negatively affects retirement security by reducing household assets, which may include retirement accounts and income. Our 2012 study found that women's household income and assets, on average, fell by 41 percent after divorce, with the income decline being almost twice the size of the decline that men experienced.<sup>2</sup>

Each year, roughly 2 million individuals divorce in the United States. Overall, more than one-third of adults 50 or older have experienced a divorce at some point,<sup>3</sup> and among those adults, the divorce rate more than doubled from 1990 to 2015, according to Pew Research Center analysis of American Community Survey data. Given these trends, ensuring spouses are aware of the ability to seek access to a share of their spouse's retirement benefits in the event of a divorce and understand how to do so is important for retirement security—particularly for women because they could be more likely to face poverty in retirement.

Although federal law generally prohibits the benefits provided under an employer-sponsored retirement plan, such as a defined benefit (DB) or

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<sup>1</sup>See GAO, *Retirement Security: Most Households Approaching Retirement Have Low Savings*, [GAO-15-419](#) (Washington, D.C.: May 12, 2015).

<sup>2</sup>See GAO, *Retirement Security: Women Still Face Challenges*, [GAO-12-699](#) (Washington, D.C.: July 19, 2012).

<sup>3</sup>According to our analysis of 2014 data from the Survey of Income and Program Participation.

defined contribution (DC) plan,<sup>4</sup> from being assigned to another person, an exception exists for the assignment of benefits through a Qualified Domestic Relations Order (QDRO), which may be used in the event of divorce. More specifically, a domestic relations order (DRO) is a court-issued judgment, decree, or order that relates to the provision of child support, alimony payments, or marital property rights to certain individuals, including a spouse or former spouse, and is made pursuant to state domestic relations law. When a DRO is approved or “qualified” as a QDRO by a retirement plan administrator, it can divide certain retirement benefits and provide crucial financial security to a former spouse, referred to as an “alternate payee.” The QDRO establishes an alternate payee’s right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable to a participant under a retirement plan.<sup>5</sup> An alternate payee may be a spouse, former spouse, child, or other dependent of the participant. For some, a QDRO can be essential in helping to generate retirement income and to provide retirement security. Other retirement assets, such as those in individual retirement accounts (IRAs), may be allocated in a divorce without a QDRO.<sup>6</sup> Divorcing parties may agree to allocate assets, including IRA assets, personal property, real property such as homes, and other assets in a way such that a QDRO is not pursued; for example, divorcing parties may choose to

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<sup>4</sup>A DB plan is an employer-sponsored retirement plan that typically provides a lifelong stream of payments beginning at retirement, based on a formula specified in the plan that takes into account factors such as the employee’s salary, years of service, and age at retirement. A DC plan is an employer-sponsored account based retirement plan, such as a 401(k) plan, that allows individuals to accumulate tax-advantaged retirement savings in an individual account based on employee and/or employer contributions, and the investment returns (gains and losses) earned on the account. See GAO, *The Nation’s Retirement System: A Comprehensive Re-evaluation Is Needed to Better Promote Future Retirement Security*, [GAO-18-111SP](#) (Washington, D.C.: October, 2017).

<sup>5</sup>See 26 U.S.C. § 414(p) and 29 U.S.C. § 1056(d)(3). For the purposes of this report, people who seek to establish rights to a former spouse’s retirement benefits are considered “prospective” alternate payees until their domestic relations order (DRO) is qualified.

<sup>6</sup>In addition to IRAs, assets that do not require a QDRO include housing and personal property and benefits under plans that are not covered by the Employee Retirement Income Security Act of 1974, as amended, (ERISA). ERISA establishes certain minimum standards and requirements for most private sector employer-sponsored retirement plans. As such, it does not apply to governmental plans, including federal and state government retirement plans. Social Security benefits are not divisible; however, if a person is divorced and his or her marriage lasted 10 or more years, the person can receive payments on the ex-spouse’s record if the person remains unmarried and his or her benefit may be more based on the ex-spouse’s work history than his or her own work history.

allocate the house and IRA to one spouse, leaving the other spouse the entirety of his or her DB or DC retirement plan.

QDROs could provide crucial financial security to certain groups. You asked us to review the process by which DROs become QDROs. This report examines what is known about: (1) the number of QDRO recipients; (2) the fees and other expenses for processing QDROs; and (3) the reasons plans do not initially qualify domestic relations orders and the challenges experts identify regarding the QDRO process.

To address these objectives, we analyzed available data, administered two surveys, and conducted interviews. To determine the number of QDRO recipients, we analyzed responses from a survey we sent to the 10 largest non-public plan sponsors and from another survey we sent to 29 record keepers and other “third party administrator” firms that provide services to plans.<sup>7</sup> Seven plan sponsors representing more than 1.5 million defined benefit plan participants and about 1.4 million defined contribution plan participants as well as seven record keepers and third party administrators representing at least 10.8 million defined contribution plan participants responded to our surveys. We also analyzed data from 2008 to 2016—the most current data available at the time of our review—from the Health and Retirement Study (HRS), which includes a variable that gauges what may happen with retirement benefits in the event of a divorce, although it does not ask if a QDRO is used. This biennial longitudinal survey collects data on individuals over age 50, including information on marital status, retirement plans held, and whether they are receiving income from those retirement plans. In addition, we interviewed 18 experts, including from advocacy organizations representing the interests of alternate payees, and QDRO drafters or divorce attorneys or legal practitioners.

Results from these surveys and interviews also allowed us to determine what is known about the fees and other expenses for processing QDROs. Results from these surveys also allowed us to determine the reasons these arrangements are not qualified initially, and to identify any challenges experts identified, which we supplemented with findings from our semi-structured interviews with agency officials and experts, as detailed above. We reviewed relevant literature and federal laws,

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<sup>7</sup>A record keeper is a firm that tracks assets in and is typically the custodian of a retirement plan.

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regulations, and guidance. For more information about our scope and methodology, see appendix I.

We conducted this performance audit from February 2019 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Requirements for Qualified Domestic Relations Orders

Although the division of marital property generally is governed by state law, the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and the Internal Revenue Code (IRC) prescribe requirements for QDROs.<sup>8</sup> Under ERISA and the IRC, a QDRO is a DRO that complies with certain legal requirements and has had its qualified status determined by a plan administrator. For a DRO to become qualified (i.e., a QDRO), a DRO must contain certain information, including: (1) the name and last known mailing address of the participant and each alternate payee, (2) the amount or percentage (or the manner in which the amount or percentage is to be determined) of the benefit to be paid to the alternate payee by each plan, (3) the number of payments or time period to which the order applies, and (4) the name of each plan to which the order applies. If the DRO complies with these and other legal

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<sup>8</sup>The QDRO provisions were added to ERISA and the IRC by the Retirement Equity Act of 1984 to, among other things, create a clearer process for divorced parties to divide retirement benefits. See Pub. L. No. 98-397, §§ 104 and 204, 98 Stat. 1426, 1433-36, 1445-49.

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requirements,<sup>9</sup> a retirement plan administrator determines it to be qualified, and thus, a QDRO, at which time a participant's retirement benefit is eligible to be divided and provided to the alternate payee for income support, as provided for in the QDRO.<sup>10</sup> Plan administrators are required to establish reasonable procedures to determine the qualified status of DROs and to administer distributions under QDROs.<sup>11</sup>

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## Types of QDROs and Other Considerations

The type of retirement plan and the way a QDRO is drafted may significantly impact how and when benefits are delivered to an alternate payee. More specifically:

- **Defined benefit vs. defined contribution plan.** Understanding the type of retirement plan is important because a DRO generally cannot be qualified if it requires a plan to provide benefits in a different type or form than otherwise provided under the plan. Under DB plans, accrued benefits generally must be payable in the form of a qualified joint-and-survivor annuity (QJSA), which typically includes a survivor annuity for the life of the participant's spouse. DB plans may pay a benefit that has a different actuarial value than the basic retirement benefit payable by the plan at the participant's normal retirement age. However, participants can only opt out of receiving benefits in the form of a QJSA with written spousal consent. A DC plan, by contrast, provides for an

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<sup>9</sup>For example, a QDRO generally cannot require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan. See 26 U.S.C. § 414(p)(3)(A) and 29 U.S.C. § 1056(d)(3)(D)(i). In addition, a QDRO cannot require a plan to (1) provide for increased benefits; (2) pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO; or (3) pay benefits to an alternate payee in the form of a qualified joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse. See 26 U.S.C. § 414(p)(3)(B)-(C) & (4)(A)(iii) and 29 U.S.C. § 1056(d)(3)(D)(ii)-(ii) & (E)(i)(III).

<sup>10</sup>Throughout this report, we use "DRO" to refer to a state court-issued judgement, decree, or order related to the provision of child support, alimony payments, or marital property, and we use "QDRO" to refer to a DRO that has been qualified by a plan administrator in accordance with federal law and plan procedures. References to "draft orders" generally refer to prepared orders that have not yet been issued by a state court as a DRO.

<sup>11</sup>See 26 U.S.C. § 414(p)(6) and 29 U.S.C. § 1056(d)(3)(G). Plan QDRO procedures must be in writing and must provide for prompt notice of such procedures to each person specified in a DRO as entitled to the payment of benefits under the plan. See 29 U.S.C. § 1056(d)(3)(G)(ii)(I)-(II).

individual account for each participant. The participant's benefits are typically based on the amount contributed to the participant's account and the performance of the investments in that account, which may fluctuate in value.<sup>12</sup>

- **Shared payment vs separate interest.** Two common drafting approaches for QDROs, shared payment and separate interest, divide benefits for different purposes. A shared payment QDRO generally splits the actual benefit payments made with respect to a participant under the plan to give the alternate payee part of each payment. Conversely, a separate interest QDRO generally divides the participant's retirement benefit (rather than just the payments) into two separate portions with the intent of giving the alternate payee a separate right to receive his or her share of the retirement benefit to be paid at a time and in a form different from that chosen by the participant.<sup>13</sup> The shared payment approach and the separate interest approach can be used for either DB or DC plans.
- **Survivor benefits.** Federal law generally requires all retirement plans to provide benefits in a way that provides for a benefit to the participant's surviving spouse (i.e., a survivor benefit) if the participant dies either before or after retirement benefits begin. Accrued retirement benefits under DB plans, as well as certain DC plans that provide for benefits to be paid as a lifetime annuity, generally must be payable in the form of a qualified joint-and-survivor annuity (QJSA), which includes an annuity for the life of the participant's surviving spouse.<sup>14</sup> In addition, DC plans for which the QJSA requirements do not apply must, upon the death

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<sup>12</sup>However, some defined benefit plans provide for lump sum payments, and some defined contribution plans provide for annuities. DOL has a booklet that provides general guidance about QDROs.

<sup>13</sup>For example, a DRO may be drafted that seeks to divide a defined contribution account into two separate accounts with an immediate separate interest for an alternate payee, which would allow the alternate payee to manage their account and decide when and how to draw down retirement income independent of their former spouse.

<sup>14</sup>Retirement benefits under these plans generally must be payable in the form of a QJSA unless the participant and spouse have specifically opted out of the QJSA form of benefit in writing. In addition, if a partially or fully vested participant dies prior to retirement, pre-retirement survivor benefits (in the form of a qualified preretirement survivor annuity (QPSA) are payable to the surviving spouse (unless the participant and spouse have specifically opted out of the QPSA form of benefit in writing). However, the benefits to the spouse need not commence until the earliest date that the deceased participant would have been eligible to begin receiving retirement benefit payments.

of the participant, provide for accrued benefits remaining in the participant's account to be payable in full to the participant's surviving spouse. However, a QDRO can instead provide for an alternate payee to be treated as the participant's surviving spouse under a DB or DC plan, which would entitle the alternate payee to receive part or all of the survivor benefits payable under the plan.<sup>15</sup>

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## Typical Process for Obtaining a QDRO

Federal law prescribes certain requirements for QDROs and requires plans to establish reasonable procedures for determining the qualified status of DROs and for administering distributions under QDROs. Typically, after an alternate payee has obtained a court-issued domestic relations order, the alternate payee submits the necessary information and follows the plan's qualification procedures to have it qualified as a QDRO, making the participant's retirement benefit eligible for division.<sup>16</sup> Individuals can submit the information on their own, although some pay representatives to do this on their behalf. For example, divorce attorneys may help prepare a draft order or help seek court approval for revisions to a DRO that was not initially qualified by a retirement plan. A third party QDRO service provider that specializes in preparing draft orders and obtaining DRO qualification may also be used by the divorcing parties or the attorneys representing the parties. Parties may pay fees at various junctures in the process. Individuals may be charged fees by a number of entities as they draft and process a QDRO.<sup>17</sup> Types of entities assessing

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<sup>15</sup>For a more complete discussion on survivor benefits, including other scenarios that would impact the financial outcomes for the participant and prospective alternate payee depending on how the DRO is written, see DOL, *QDRs: The Division of Retirement Benefits through Qualified Domestic Relations Orders*, 2014, Section 3-5.

<sup>16</sup>As noted elsewhere in this report, a QDRO can also be used to secure child support. Once the DRO is qualified by a plan as a QDRO, the participant's retirement benefit is eligible to be allocated for this purpose.

<sup>17</sup>In 2003, a Department of Labor (DOL) Field Assistance Bulletin expressed DOL's view that ERISA allows DC plans to allocate reasonable expenses in that ERISA does not "preclude the allocation of reasonable expenses attendant to QDRO . . . determinations to the account of the participant or beneficiary seeking the determination." See DOL, Field Assistance Bulletin 2003-03 (Washington, D.C.: 2003). DOL's Field Assistance Bulletin 2003-03 specifically discusses the allocation of expenses in defined contribution plans. Thus, it does not discuss defined benefit plans, and DOL has not issued specific guidance regarding the allocation of QDRO qualification fees in defined benefit plans. DOL officials said that tax qualification issues within the jurisdiction of the Department of the Treasury would likely arise depending on the way the fees were charged to the alternate payee in a defined benefit plan.

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fees, and the purposes of fees that may be charged for QDRO services depending on the individual circumstance, are shown in table 1.

**Table 1: Types of Fees for Preparing or Reviewing Domestic Relations Orders (DROs)**

Entity charging fee	Services covered by the fees	How fees may be charged
Divorce attorneys	<ul style="list-style-type: none"> <li>Preparing draft orders or a model Qualified Domestic Relations Order (QDRO)</li> <li>Obtaining DRO qualification from retirement plan and making revisions required by the plan and obtaining an amended DRO for qualification</li> </ul>	<ul style="list-style-type: none"> <li>Included in hourly rate</li> <li>Flat fee</li> <li>Pass through of fee charged by third party QDRO service provider</li> </ul>
Third party QDRO service providers that specialize in preparing draft orders and obtaining DRO qualification from retirement plans	<ul style="list-style-type: none"> <li>Preparing draft orders or a model QDRO</li> <li>Obtaining DRO qualification from retirement plan and making revisions required by the plan and obtaining an amended DRO for qualification</li> <li>Reviewing draft orders prepared by attorneys for consistency with plan provisions and compliance with state and federal requirements for QDROs</li> </ul>	<ul style="list-style-type: none"> <li>Typically a flat fee charged directly to divorcing parties</li> <li>Billed to divorcing parties' attorneys, who can pass through or include in their hourly rates</li> </ul>
Retirement plans	<ul style="list-style-type: none"> <li>Copying or similar fees for obtaining plan documents and benefit information</li> <li>Reviewing defined contribution draft orders for consistency with plan provisions and compliance with other legal requirements such as state law and obtaining DRO qualification</li> <li>Administrative fee for implementing a QDRO in the plan's database and setting up revised distribution of benefits</li> </ul>	<ul style="list-style-type: none"> <li>Deducted from participant's account<sup>a</sup></li> <li>Billed directly to participant/alternate payee</li> </ul>

Source: GAO analysis of information provided by outside experts. | GAO-20-541

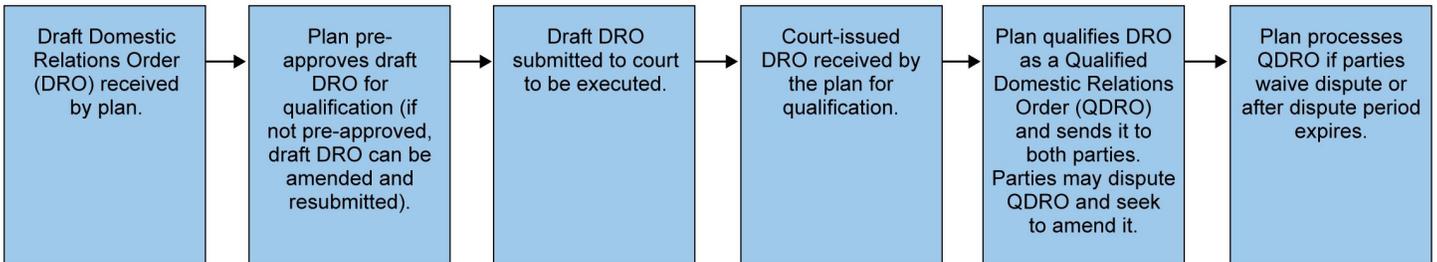
Notes: Court costs are generally incurred in obtaining a DRO, but courts are not directly involved in the qualification of a DRO.

<sup>a</sup>In 2003, a Department of Labor (DOL) Field Assistance Bulletin expressed DOL's view that the Employee Retirement Income Security Act of 1974, as amended, (ERISA) allows defined contribution plans to allocate reasonable expenses in that ERISA does not "preclude the allocation of reasonable expenses attendant to QDRO . . . determinations to the account of the participant or beneficiary seeking the determination." See DOL, Field Assistance Bulletin 2003-03 (Washington, D.C.: 2003). DOL's Field Assistance Bulletin 2003-03 specifically discusses the allocation of expenses in defined contribution plans. Thus, it does not discuss defined benefit plans, and DOL has not issued specific guidance regarding allocation of QDRO determination fees in defined benefit plans. DOL officials stated tax qualification issues within the jurisdiction of the Department of the Treasury would likely arise depending on the way the fees were charged to the alternate payee in a defined benefit plan.

Once a DRO is submitted to a plan administrator for qualification, the process could involve a number of steps, depending on plan procedures and the contents of the DRO. Some steps may need to be repeated if a plan determines it is unable to qualify the DRO upon submission (see fig. 1).<sup>18</sup>

<sup>18</sup>A divorce decree may serve as a QDRO if it fully contains the required information under ERISA. A QDRO is not required to divide individual retirement account (IRA) assets or benefits under non-ERISA covered plans.

**Figure 1: Hypothetical Process a Plan Administrator May Follow to Determine Qualified Status of a Domestic Relations Order**



Source: GAO analysis of documentation and interviews with plan sponsors and service providers. | GAO-20-541

Notes: In some cases, the step outlined in the second box may be omitted, for instance should a participant obtain a DRO or final court order and submit that to the plan for qualification as a QDRO. The process could involve a number of steps or follow a different pathway, depending on plan procedures, the contents of the DRO, and individual choices by the parties pursuing a QDRO.

## Federal Agency Roles and Responsibilities

The Department of Labor (DOL) has primary responsibility for administering and enforcing the reporting and disclosure and fiduciary responsibility provisions, including those that relate to DROs and QDROs, in Parts 1 and 4 of Title I of ERISA. In addition, DOL has jurisdiction to interpret QDRO requirements set forth in Part 2 of Title I of ERISA and section 414(p) of the IRC, except as provided in IRC section 401(n).<sup>19</sup> ERISA requires plans, among other things, to provide participants with a Summary Plan Description (SPD) and to provide notice of QDRO procedures to all persons specified in a DRO as entitled to payment of benefits under the plan.<sup>20</sup> In addition, DOL regulations require the SPD to include a description of the procedures governing QDRO determinations or a statement indicating that participants can obtain a copy of such procedures from the plan administrator without charge.<sup>21</sup> Investigators within DOL’s Employee Benefits Security Administration (EBSA),<sup>22</sup> as part of DOL’s monitoring and enforcement efforts, complete a Reporting and

<sup>19</sup>Under section 401(n) of the IRC, Treasury is authorized to prescribe such rules or regulations as maybe necessary to coordinate the requirements of sections 401(a)(13)(B) and 414(p) of the IRC, and the regulations issued by DOL thereunder, with the other provisions of chapter 1 of the IRC.

<sup>20</sup>See 29 U.S.C. §§ 1022 and 1056(d)(3)(G)(ii)(II).

<sup>21</sup>See 29 C.F.R. § 2520.102-3(j)(1).

<sup>22</sup>EBSA’s mission is to assure the security of the retirement, health and other workplace related benefits of America’s workers and their families.

Disclosure checklist to determine whether the plan is in compliance with ERISA reporting and disclosure provisions. Some investigators also complete an SPD checklist to determine whether the SPD includes certain things, including a description of procedures governing QDROs.<sup>23</sup>

The Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) also have a role with respect to QDROs. In its role administering the Internal Revenue Code, including provisions related to QDROs, IRS receives income tax information with respect to alternate payees, via the Form 1099-R that the plan administrator files. The Form 1099-R reports distributions received by a plan participant or other beneficiary, such as an alternate payee.<sup>24</sup> The PBGC serves as trustee for terminated single-employer DB plans that are underfunded and unable to pay guaranteed benefits. As trustee, PBGC administers the QDRO process for these plans, which includes reviewing DROs and making determinations on the qualified status of the submitted DROs.<sup>25</sup> Further, DOL, PBGC, and IRS jointly developed the Form 5500, the primary source of information collected by the federal government regarding pension plans. The Form 5500 is part of ERISA's overall reporting and disclosure framework, which is intended to ensure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants, beneficiaries, and federal agencies are

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<sup>23</sup>DOL also provides some written information in publications that highlight the challenges of planning for retirement and some of these publications include information on the challenges of splitting assets in a divorce. In 2014, DOL published a QDRO booklet to provide general guidance on QDROs. See DOL, *QDROs, The Division of Retirement Benefits Through Qualified Domestic Relations Orders* at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/qdros.pdf>. DOL has also issued frequently asked questions (FAQs) related to QDROs. See DOL (1) <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/qdro-overview.pdf>; (2) <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qdro-determining-qualified-status-and-paying-benefits.pdf>; and (3) <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qdro-drafting.pdf>.

<sup>24</sup>Form 1099-R information returns for reporting payments for calendar year 2020 are due to the payee by February 1, 2021 and to IRS by March 31, 2021.

<sup>25</sup>PBGC insures DB plan benefits up to statutory levels. The PBGC has two separate insurance programs, one for single-employer plans and one for multiemployer plans. Unlike terminated single-employer plans, for which PBGC serves as trustee, PBGC provides financial assistance to insolvent multiemployer plans, but the plan trustees continue administering the plan, which includes the administration of QDROs.

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provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries.

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## Experts Reported That Few Participants Have QDROs, and Those with Lower Incomes May Face Greater Challenges in Obtaining a QDRO

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### Little Data on QDROs Exist and Most Experts Reported That Few Participants in Their Plans Were Parties to QDROs

No nationally representative data are available on the number of DROs qualified or the demographic characteristics of the parties to them. DOL does not systematically collect data on QDROs by requiring plans to report the number of DROs they review for qualification, and we were not able to identify any other federal agencies that collect nationally representative data on QDROs. In addition, household survey data we reviewed does not include information on QDROs. For example, the Current Population Survey does not identify financial support provided to ex-spouses. We also examined other potential datasets including the Survey of Consumer Finances (SCF) and the Survey of Income and Program Participation (SIPP); however, these sources could not be used. The SCF did not include a sufficiently large sample size for a variable capturing divorced persons' income from a former spouse's pension. The SIPP did not have any variables pertaining to QDROs or the disposition of retirement benefits after divorce, although we analyzed 2014 SIPP data—the most current data available at the time of our review—to determine the prevalence of divorce in the United States. Our review of these datasets is explained in more detail in appendix 1.

Although more than one-third of adults aged 50 or older have experienced a divorce at some point, experts—including six of the 10 largest non-public plan sponsors, three record keepers or third-party administrators, the PBGC, and a large multiemployer plan with more than 650,000 plan participants that we interviewed or surveyed—reported to us that comparatively few former spouses of participants in their retirement plans sought or obtained QDROs. For example, PBGC administered benefits to about 1.6 million DB plan participants, and qualified about 16,000 QDROs in the last 10 years, for a QDRO-to-participant ratio of about 1:97. As noted earlier, more than one-third of adults aged 50 or

older in the United States have experienced a divorce. However, the data we collected from survey respondents does not allow us to determine the number or percentage of participants who experienced a divorce, nor does it allow us to determine the number of QDROs applicable to the plan administrator or record keeper's divorced population. Table 2 below shows selected data we obtained. For the full results of our data provided by all of the survey respondents, PBGC, and the multiemployer plan, along with our estimated QDRO-to-participant ratios, see appendix II.<sup>26</sup>

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<sup>26</sup>While not comprehensive or representative of the general population, many plan sponsors and record keepers we surveyed or interviewed provided us with counts of plan participants and the number of DROs they reviewed for qualification in recent years. Six of the 10 largest non-public plan sponsors, three record keeper or third party administrators, and two other plan sponsors (that are not among the 10 largest non-public) responded to our survey in a manner that allowed us to calculate estimated ratios of QDROs to participants. Data from one large plan sponsor and from four record keepers are not included in our reporting because the data provided was either incomplete or unreliable. We used these data to estimate the number of DROs qualified by these entities in the last 10 years and a QDRO-to-participant ratio for each entity.

**Table 2: Estimated Ratio of Domestic Relations Orders (DROs) Qualified by Selected Large Plan Sponsors and Plan Record Keepers to Plan Participants in the Last 10 Years**

Description of entity (method of obtaining information)	Number of plan participants	Estimated number of DROs qualified in the last 10 years	Approximate estimated ratio of QDROs to participants
Plan sponsor #1	400,000 in defined contribution (DC) plans	10,000 <sup>a</sup>	1:40
	400,000 in defined benefit (DB) plans	15,000	1:27
Plan sponsor #2	208,200 in DC plans	10,300	1:20
	380,000 in DB plans	13,100	1:29
Record keeper #1	9,522,449 in DC plans	120,000	1:79
Record keeper #2	1,252,200 in DC plans	5,000	1:250
Pension Benefit Guaranty Corporation (PBGC)	1,555,000 in DB plans.	16,030 <sup>b</sup>	1:97
A multiemployer plan	653,700 in DB plans	13,897 <sup>c</sup>	1:47

Source: GAO analysis of information collected from survey responses of large non-public plan sponsors or their third-party administrators, survey responses of SPARK member firms that serve as plan record keepers, or through interviews with representatives of plan sponsors or administrators and with PBGC. | GAO-20-541

Note: We did not capture the number of participants covered by these entities that divorced during the time period in the survey. Therefore, we cannot estimate the ratio of Qualified Domestic Relations Orders (QDROs) to participants that divorced over the past 10 years. Duplicate counting of participants is also possible in two respects: (1) Among the plan sponsors, participants may be enrolled in both defined contribution (DC) and defined benefit (DB) plans; and (2) some of the record keepers surveyed may be servicing plans sponsored by the responding plan sponsors. We did not collect data to test for these possibilities.

<sup>a</sup>These numbers are 10-year estimates based on information provided by the plan sponsor for a smaller number of years. For example, the plan sponsor with 400,000 DC and DB plan participants reported to us that it had qualified 1,000 DC and 1,500 DB DROs in the past year. Accordingly, we estimated the firm had qualified 10,000 DC and 15,000 DB DROs in the last 10 years. As such, our ratios are also estimates.

<sup>b</sup>PBGC provided us with a complete count of QDROs in effect. Therefore, this figure is not a 10-year estimate.

<sup>c</sup>This count represents a 10-year estimate based on a 3-year count of 4,169 DROs qualified that plan representatives provided us. As such, our ratios are also estimates.

While there are no nationally representative data on the prevalence of QDROs, data from the Health and Retirement Study (HRS) provide self-reported information on the loss of a claim to a former spouse’s pension, and allowed us to identify persons who reported having lost a claim to their former spouses’ retirement benefits as a result of a divorce. The HRS includes a question that asks participants who have been separated or divorced from a spouse in the prior 2 years, “Did you lose any part of your claim on your former (husband/wife/partner)’s pension?”<sup>27</sup> We

<sup>27</sup>The HRS, conducted by the University of Michigan’s Institute for Social Research, surveys persons over age 50 every 2 years about their retirement status and that of their spouse, among other things. If a respondent’s former spouse did not have a pension, a response of “no” would be recorded.

analyzed the numbers and demographic characteristics of respondents who reported losing at least part of their pension claim as a result of divorce and those who did not. While these data do not indicate the definite presence of a QDRO, our analysis found that:

- An estimated 18 percent of persons who were divorced or separated from 2008 to 2016 reported losing at least part of a claim to a former spouse's retirement benefits, while an estimated 82 percent of such persons did not (+/- 3.8 percent margins of error at the 95 percent confidence level).<sup>28</sup>
- A greater percentage of persons from more historically advantaged demographic groups—such as non-Hispanic Whites, those with post-secondary education, and high income earners—reported having lost a claim to their former spouse's retirement benefits. This result is consistent with findings we have previously reported that economically advantaged persons are more likely to have a retirement plan.<sup>29</sup>
- Of those who reported that their former spouse had a retirement plan, an estimated 31 percent reported losing at least part of their claim to a former spouse's retirement benefits, while an estimated 69 percent did not.<sup>30</sup>

See appendix 3 for additional results of our analyses of the HRS data, including differences across several demographic characteristics of the respondents such as race/ethnicity, age, income, and assets.

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<sup>28</sup>These margins of error apply to the true population percentage who reported losing a claim, not the true percentage who actually lost a claim; HRS does not collect financial statements or other such information from survey respondents to verify whether statements they made regarding financial assets are correct.

<sup>29</sup>[GAO-18-111SP](#).

<sup>30</sup>These estimates have margins of errors of +/-5.3 percent at the 95 percent confidence level. These margins of error apply to the true population percentage who reported losing a claim, not the true percentage who actually lost a claim. HRS does not collect financial statements or other such information from survey respondents to verify statements they made regarding financial assets are correct. Our analysis identified a total of 775 respondents who were divorced or separated and responded to the question asking if they had lost a claim to a spouse's pension from 2008 to 2016. We also identified those respondents whose former spouse's in previous waves of the survey reported they had a pension, and found that from 2008 to 2016 there were 240 such respondents. Some of the difference in the numbers could be attributed to newly separated or divorced spouses realizing only at the time of divorce that their former spouse had a pension to which they may have been entitled.

We recognize that the HRS data may not capture all cases where respondents have lost access to their former spouse's retirement benefits. For example, some HRS survey participants may have responded that they did not lose their claim because they (1) were not aware they may have been able to use a QDRO to seek part of their former spouse's pension, (2) were not aware that their former or currently separated spouse had a retirement plan to which they could potentially claim rights, or (3) were pursuing part of their former spouse's pension but failed to have a DRO qualified.<sup>31</sup> Some respondents may also have opted not to divide retirement benefits in exchange for receiving other assets such as a house.<sup>32</sup>

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### Experts Cited Reasons That the QDRO Process Posed Added Challenges for Some Groups

Many experts we spoke to stated that certain people—particularly those with lower incomes or other disadvantages—face several challenges to successfully navigating the QDRO process, which may lead some to forgo pursuing a QDRO. These challenges include: (1) inability to pay the fees associated with the DRO preparation; (2) lack of knowledge about a spouse's retirement benefits; (3) lack of expertise when couples represent themselves in their divorce; and (4) lack of a full understanding of how QDROs can be used, such as a means of obtaining child support.<sup>33</sup>

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<sup>31</sup>Experts also noted that individual states may have laws, such as community property laws, that could affect how interested parties pursue QDROs. However, any analysis of state law was outside the scope of our review; therefore, we did not review any state laws in the course of our work.

<sup>32</sup>Some experts we spoke with said that it was common for a female spouse to seek to retain the family house in a divorce, in lieu of the former spouse's retirement benefit. Some experts shared their view that this practice was not always in the divorcing female spouse's best interest, as the house may be expensive to maintain over the long term.

<sup>33</sup>In addition, with respect to the HRS estimates we reported earlier in this report, we note it is possible that persons from more historically disadvantaged demographic groups were less likely to have been aware that their former or currently separated spouse had a retirement plan to which they potentially could have claimed rights to. As a result, our HRS results could underestimate the extent to which divorced persons lost or retained rights to their divorced or separated spouses' retirement plans, and this underestimation could be greater for more historically disadvantaged groups than for historically advantaged groups.

- **Inability to pay the fees associated with the DRO preparation.**

Several experts indicated that they are aware of cases where couples with low incomes choose not to pursue a QDRO because their retirement account balances are not sufficient to warrant paying the fees for drafting and approving the QDRO, which could leave their account balance “drained.”<sup>34</sup> Some of these experts expressed concern that high fees alone may keep members of some vulnerable populations—such as low-income couples—from pursuing a QDRO.<sup>35</sup> Moreover, one study found that divorce may also cause individuals to take an early withdrawal from their retirement savings to pay for legal fees or other expenses. This study found that divorce increased the likelihood of withdrawing savings from a retirement plan by nearly 10 percent, which was higher than for other income shocks such as an increase in health care costs or job loss.<sup>36</sup>

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<sup>34</sup>As we reported in March 2019, participants with small account balances are more likely to take early withdrawals from their retirement savings plan. Those with small account balances may also opt to cash out their account balance instead of pursuing a QDRO, however early withdrawals are subject to income tax and, possibly, an additional 10 percent tax for early distributions. See GAO, *Retirement Savings: Additional Data and Analysis Could Provide Insight Into Early Withdrawals* [GAO-19-179](#) (Washington, D.C.: March 28, 2019).

<sup>35</sup>This may be consistent with our finding in HRS data that a greater frequency of non-disadvantaged groups lost a claim; more economically advantaged individuals are more likely to have a DC account and are more likely to have other assets. The HRS data do not differentiate between “losing” a claim and “surrendering” a claim in divorce negotiations.

<sup>36</sup>Bridges, Thomas P. and Frank P. Stafford, “Pre-Retirement Pension Saving: Responses to Liquidity Change and Consumption Needs,” University of Michigan Working Paper, Feb. 2020.

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- **Lack of knowledge about a spouse’s retirement benefits.** Several experts stated that some prospective alternate payees may not know their spouse had a retirement account and, therefore, a benefit to which they might have a claim. As a result, these individuals may miss out on an opportunity to enhance their retirement security through pursuing a QDRO.<sup>37</sup>

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<sup>37</sup>Our November 2014 report notes that some DC plan participants find it difficult to keep track of their savings, particularly when they change jobs, because of challenges they face with trying to consolidate their accounts, poor communication between sponsors and participants, and inadequate information. Under certain conditions when a participant changes jobs without indicating what should be done with the money, the plan can transfer the account savings—a forced transfer—into an individual retirement account (IRA). See GAO, *401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts* [GAO-15-73](#) (Washington, D.C: Nov. 21, 2014). Prospective alternate payees may also lose opportunities to bolster their retirement security, should their spouse no longer participate in or lose track of their retirement savings.

- **Lack of expertise when couples represent themselves in their divorce.** According to some experts, participants and prospective alternate payees often represent themselves in the divorce proceedings (known as “pro se” legal representation), and such pro se divorces are increasing.<sup>38</sup> Without the use of professional legal advice, they may be unaware of the need for a QDRO or may not recognize provisions in a QDRO that may not treat them equitably, even when they use a model QDRO to draft a DRO.<sup>39</sup> Some experts also said parties representing themselves also may have difficulty navigating the process of having a DRO qualified by the plan. For example, they may use a plan’s model QDRO without modifying it to reflect any court approved settlement, or fail to meet formatting requirements of their state’s court system, which may result in the need to submit a DRO to the plan multiple times before it is qualified.<sup>40</sup>

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<sup>38</sup>For example, representatives from one firm that reviews almost 10,000 DROs each year said that according to company data, in 2017 24 percent of prospective alternate payees did not have attorneys representing them in the divorce, and in 17 percent of cases neither party had attorneys. Those percentages rose, and for January through October 2019, 30 percent of prospective alternate payees did not have counsel, and in 24 percent of cases neither party had attorneys.

<sup>39</sup>A model QDRO is a document developed by a plan sponsor or record keeper that provides plan specifics and requirements and can be used as a template for drafting the order.

<sup>40</sup>In 2019 PBGC estimated it would take approximately 10 hours of the participant’s or alternate payee’s time if an attorney was not hired to complete a DRO. If an attorney is hired, the PBGC estimated the time invested by the participant or alternate payee would be almost 1 hour, while legal fees would be about \$1,500. PBGC had previously in 2015 estimated that the cost would be \$478 in legal fees if the participant or alternate payee hired legal representation. PBGC officials told us they did not have a cost analysis to provide details on how the agency arrived at its estimates. See *Qualified Domestic Relations Orders and the PBGC*, October 2015.

- **Lack of a understanding about how QDROs can be used.** A QDRO may be pursued to provide child support payments for dependent children in addition to providing retirement income; however, experts generally stated that the use of QDROs for such purposes was rare,<sup>41</sup> and a few experts said that many involved parties are not aware of or do not understand that QDROs can be used for this purpose. One expert said that child welfare agencies in a couple of states were beginning to more commonly help alternate payees use QDROs to secure child support payments when their spouse did not otherwise provide them. According to one expert, in some cases, the amount being sought in the QDRO for child support takes up a substantial portion—or even the entire portion—of the retirement benefits that are being divided. Once the cost of the fees for reviewing the QDRO are included, the participant and alternate payee may not have any remaining benefit. However, experts added that they were aware of only a couple of states where child welfare agencies were focusing on helping alternate payees obtain a QDRO for child support payments.

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## Fees for QDRO Preparation and Review Varied Widely and DOL Does Not Have Information about Fees

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### Multiple Types of Fees Were Charged for QDRO Services and Amounts Varied Widely

Individuals seeking a QDRO generally face fees for preparation of a draft order and, in the case of defined contribution plans, may face a separate fee from the plan or its service providers to review a DRO for qualification. Experts we spoke with stated their view that federal law prohibits defined benefit plans from charging a fee to plan participants and alternate payees for QDRO qualification determinations. In contrast, DOL's Field Assistance Bulletin 2003-03 states DOL's view that ERISA does not preclude defined contribution plans from charging reasonable fees

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<sup>41</sup>One expert estimated that of the nearly 10,000 DROs its firm reviews on behalf of plans each year, a couple hundred are for child support payments.

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associated with QDRO qualification determinations to the participant seeking the qualification.<sup>42</sup>

There are no systematically collected data on fees charged by retirement plans or attorneys for preparing or reviewing DROs. DOL does not require that fees for reviewing or processing a QDRO be included in retirement plan fee disclosures, its Form 5500, or in the Summary Plan Description. We obtained information on specific fees from interviews, on-line research, and responses from surveys, and found that QDRO fees vary widely and may depend on the type and amount of services provided.<sup>43</sup> For example, of the seven non-public large plan sponsors that completed our survey, two plan sponsors charge a fee to review a defined contribution plan DRO (\$300 for one, \$350 for the other), and five plan sponsors stated they did not charge a fee. Of the seven record keepers or third party administrators that responded to our survey or provided information to us, three stated they charged a fee to review a defined contribution DRO (ranging from \$75 to \$1,200 for review of a defined contribution DRO involving a single plan);<sup>44</sup> three did not, and one did not respond to this question. Through our interviews with experts, we found that typical fees for DRO preparation and submission for plan review charged by QDRO service providers ranged from \$250 to \$800. These fees apply to both DB and DC plans. Experts said typical fees charged by retirement plans or their record keepers for DRO qualification ranged from

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<sup>42</sup>DOL's Field Assistance Bulletin 2003-03 specifically discusses the allocation of expenses in defined contribution plans, and does not address defined benefit plans. DOL has not issued specific guidance regarding allocation of QDRO qualification fees in DB plans. DOL officials stated that tax qualification issues within the jurisdiction of the Department of the Treasury would likely arise depending on the way the fees were charged to the alternate payee in a defined benefit plan.

<sup>43</sup>We obtained information on specific fees from interviews, on-line research, and responses from 14 survey responses from the largest plan sponsors and plan record keepers and third party administrators, as well as other experts. One record keeper did not respond to this survey question. For more information on the experts we interviewed and plan sponsors and record keepers and third party administrators we surveyed, see appendix I.

<sup>44</sup>One record keeper in its survey response stated that it charged \$1,800 to review a DRO that was not completed on-line through its website and that references multiple plans that the company manages the accounts for on behalf of a plan. In addition, another record keeper stated that it charged a \$250 fee upon implementation of a QDRO for DC plans if plan provisions do not prohibit such a practice.

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\$300 to \$600. However, these fees varied widely and were \$1,200 or more in some cases (see table 3).<sup>45</sup>

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<sup>45</sup>Divorcing parties may be assessed other fees in addition to those assessed by the plan, as described in Table 1 of this report.

**Table 3a: Examples of Selected Fees for Preparing or Qualifying Domestic Relations Orders (DRO)**

<b>Entity assessing fee/(method of obtaining information)</b>	<b>Fee/Cost</b>	<b>Service provided<sup>a</sup></b>
Large non-public plan sponsor (survey) <sup>b</sup>	\$0 <sup>c</sup>	For defined contribution (DC) plan review and qualification
Large non-public plan sponsor (survey) <sup>b</sup>	\$300	For DC plan review and qualification
Large non-public plan sponsor (survey) <sup>b</sup>	\$350	For DC plan review and qualification
Plan record keeper (survey) <sup>b</sup>	\$500 – 1,000	For DC plan review and qualification <sup>d</sup>
Plan record keeper (survey) <sup>b</sup>	\$75 – 400	For DC plan review and qualification
Large plan record keeper (survey) <sup>b</sup>	\$300	For DC draft order review and DRO qualification that uses a plan's model QDRO
	\$1,200	For DC draft order review and DRO qualification that does not use a plan's model QDRO
	\$1,800	For DC draft order review and DRO qualification that does not use a plan's model QDRO and names multiple plans in the DRO
Plan record keeper (survey) <sup>b</sup>	\$250	Charged upon implementation of the Qualified Domestic Relations Order (QDRO) for DC plans if plan provisions do not prohibit such a practice
Third party QDRO service provider (interview) <sup>e</sup>	\$1,000 – 1,250	Preparation and processing of DC or DB QDRO
Attorneys (interview) <sup>e</sup>	\$180 – 800/hour	Fees for DC or DB QDRO services
Third party QDRO service providers (interview) <sup>e</sup>	\$400 — 850	DC or DB QDRO preparation

**Table 3b: Examples of Selected Fees for Preparing or Qualifying Domestic Relations Orders (DRO)**

Entity assessing fee/(method of obtaining information)	Fee/Cost	Service provided <sup>a</sup>
Plan sponsors (interview) <sup>e</sup>	\$300 – 750	For DC plan review and qualification
Plan sponsors or their record keepers (interview) <sup>e</sup>	\$300 — 1,200	For DC plan review and qualification

Source: GAO analysis of survey responses from large, non-public plans sponsors and record keepers, and of information obtained from interviews of attorneys, QDRO service providers, and a group representing employee benefits administrators. | GAO-20-541

<sup>a</sup>We note a Department of Labor (DOL) Field Assistance Bulletin has expressed DOL's view that the Employee Retirement Income Security Act of 1974, as amended, (ERISA) allows defined contribution (DC) plans to allocate reasonable expenses for defined contribution plans, in that ERISA does not "preclude the allocation of reasonable expenses attendant to QDRO . . . determinations to the account of the participant or beneficiary seeking the determination." See DOL, Field Assistance Bulletin 2003-03 (Washington, D.C.: 2003). DOL's Field Assistance Bulletin 2003-03 specifically discusses the allocation of expenses in defined contribution plans. Thus, it does not discuss defined benefit plans, and DOL has not issued specific guidance regarding allocation of QDRO determination fees in defined benefit plans. DOL officials stated tax qualification issues within the jurisdiction of the Department of the Treasury would likely arise depending on the way the fees were charged to the alternate payee in a defined benefit plan.

<sup>b</sup>(Survey) indicates responses to our survey of large non-public plans or our survey of record keepers and third party administrators, which provide services to plans.

<sup>c</sup>An additional five plan sponsors that responded to our survey also said they did not charge any review and qualification fees to plan participants or alternate payees.

<sup>d</sup>This firm informed us it charges these fees for only one of its four products. It did not specify the nature of these products.

<sup>e</sup>(Interview) indicates fee data was obtained from interviews with experts, such as attorneys or groups representing plan sponsors. These parties provided ranges of fees they charge or were aware of being charged by other providers for the particular service.

## Some Outside Experts Said They Consider Some QDRO Fees High, and DOL Does not Have Information About Fees

Many of the experts we spoke with expressed concerns about fees being burdensome. Several experts generally considered fees above \$500 or \$600 for DRO review and qualification to be excessive and noted that such fees may discourage some members of vulnerable populations—such as low-income individuals—from pursuing a QDRO. While acknowledging typical fees were lower, some experts we spoke with said it was not uncommon to see fees for preparation alone—not including other processing costs, such as review and qualification—of \$1,200 or

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more.<sup>1</sup> Moreover, divorcing parties can also face significant attorney fees. Several experts indicated that the QDRO process is complex and difficult for divorcing couples to navigate.

DOL officials said that the agency has authority to oversee fees for QDRO services paid by the plan. DOL has said plans can assess reasonable expenses for services undertaken for a participant's DC account.<sup>2</sup> As such, fees assessed by plans may be passed on to participants of DC plans. DOL officials stated that the reasonableness of these fees depends on the facts and circumstances of a particular case. DOL maintains that fees charged by QDRO providers other than plans—such as attorney's fees or QDRO preparation fees—are outside of its purview. Nonetheless, some experts said that not enough information exists about providers of QDRO services and reasonable costs of these services—whether provided by attorneys and QDRO service providers for preparing DROs, or by plans or their administrators or record keepers for reviewing and qualifying DROs—and that existing information is difficult to navigate and unclear.

Although DOL has stated that plan administrators or sponsors must ensure that any fees they are paying to third parties for QDRO approval are reasonable and closely associated to the cost of providing those services, the agency does not collect and analyze information on such fees. In March 2020, DOL officials provided written comments to us stating that the agency does not collect specific information on QDRO fees as a standard part of investigations or other information collections, including annual filings from plans through the Form 5500. For example, DOL does not include a separate category for QDRO-related services, although it does require large plans to report compensation above certain thresholds received by service providers for services provided to the plan, as well as a description of the services provided, on the Form 5500 Schedule C. DOL officials stated that initiating any such information collection would require compliance with the Administrative Procedure Act, the Paperwork Reduction Act, and Executive Orders on agency rulemaking through which stakeholders would be able to provide comments. The agency stated it had not prepared any estimate of the

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<sup>1</sup>One record keeper we identified charged fees in this range for DRO review and qualification if a DRO did not use the model QDRO without modifications. We contacted this record keeper and company officials told us those DROs that did not adhere to its model QDROs resulted in significant additional time for the company to review and qualify.

<sup>2</sup>See DOL, Field Assistance Bulletin 2003-03 (Washington, D.C.: 2003).

burden that such a collection may impose on plans and other affected stakeholders. They also added that the agency has never undertaken an overall examination of plan practices related to fees for QDRO review and qualification.

Although DOL officials told us the agency does not have the resources to determine the reasonableness of fees on a plan-by-plan basis,<sup>3</sup> evaluating the burden of collecting such information, and in particular considering collecting fee information as part of existing reporting requirements, could help DOL in its administration of ERISA. For example, DOL may be able to better understand trends in fees or discern outlier plan fees that warrant further consideration. Without information from plans about fees related to QDROs, DOL may be missing opportunities to bolster its oversight of plans. As we noted earlier, DOL's Field Assistance Bulletin 2003-03 states that in DOL's view, reasonable fees associated with QDRO qualification determinations can be passed on to defined contribution plan participants seeking DRO qualification. Further, an October, 2018 DOL Employee Benefits Security Administration (EBSA) presentation on its enforcement role notes that "expenses are reasonable only if they are necessary for the operation of the plan, and are not excessive for the service received." According to its mission statement, EBSA is responsible for assuring the security of the retirement, health, and other workplace related benefits of America's workers and their families. The agency states it will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

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<sup>3</sup>In July 2020 DOL officials stated that the reasonableness of fee arrangements would generally require the agency to hire outside experts to assist in determining whether on a plan-by-plan basis there is an unreasonable fee arrangement to pursue enforcement action. However, according to DOL officials, DOL can determine if there are prohibited and self-dealing fee arrangements, or if the fee arrangement is egregious.

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## Experts Said Domestic Relations Orders Often Were Not Qualified Due to Missing Information, and DOL Could Improve Access to Resources for Divorcing Parties

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### Experts Cited Missing Information and other Key Reasons Draft Domestic Relations Orders Were Initially Not Qualified

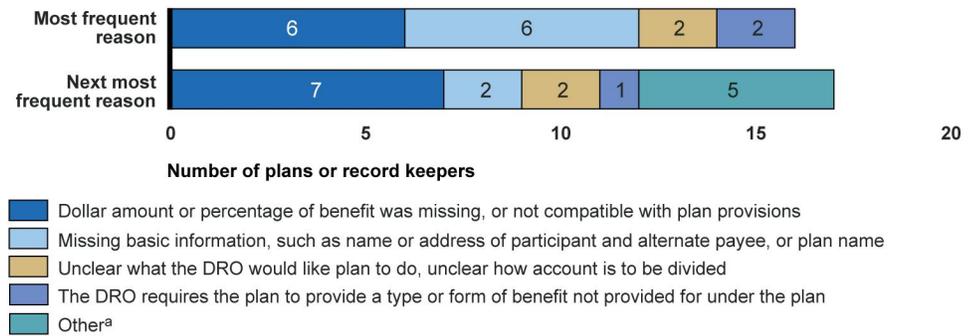
Plans, record keepers, and third party administrators ranked the main reasons for not qualifying a DRO upon first review, and the top reasons selected included the absence of basic information—such as the participant or alternate payee’s name and address—or information that did not comply with plan specifics. Among 16 responses to this question,<sup>4</sup> 13 ranked the answer “the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee was missing or did not comply with plan provisions” as the most frequent or next most frequent reason for not qualifying a DRO (see figure 2).<sup>5</sup> Another eight responses ranked the answer about the DRO missing basic information—such as “the name or last known mail address of the participant and each alternate payee was missing or incorrect, or the name of each plan to which the order applies was missing or incorrect”—as the most frequent or next most frequent reason for not qualifying a DRO.

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<sup>4</sup>Seven of the 10 large non-public plan sponsors and seven of 29 record keeper or third party administrators responded to our survey question identifying the common reasons cited for not qualifying a DRO. Two plans provided individual responses for its defined benefit (DB) and defined contribution (DC) plans, and we counted each as a discrete response where feasible, providing a total of 16 responses to this survey question.

<sup>5</sup>We note that two plans submitted separate responses for DC and DB plans, hence we received a total of 16 responses from 14 plan sponsors, record keepers, or third-party administrators. As noted earlier, the largest 10 non-public plan sponsors that responded in total comprise more than 1.5 million defined benefit plan participants and about 1.4 million defined contribution plan participants. The record keepers and third-party administrators that responded in total comprise at least 10.8 million defined contribution plan participant accounts.

**Figure 2: Plan Administrators and Record Keepers Reported Reasons for Not Qualifying a Domestic Relations Order (DRO)**



Source: GAO survey of plan administrators and recordkeepers. | GAO-20-541

Note: Seven of 10 large non-public plan sponsors and seven of 29 record keeper or third party administrators responded to our survey. Two plans provided individual responses for its defined benefit (DB) and defined contribution (DC) plans, and we counted each as a discrete response where feasible.

<sup>a</sup>Other includes potential responses that the number of payments or time period to which the order applies was missing or not compatible with account provisions, the domestic relations order (DRO) requires plan to provide for increased benefits than plan allows, the DRO requires a plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a Qualified Domestic Relations Order (QDRO), or the DRO requires a plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse. A benefit payable in the event of the participant's death for the participant's spouse is known as a "survivor benefit."

More specifically, among the large plan sponsors who responded to this question in our survey, six of nine responses ranked "the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee was missing or did not comply with plan provisions" as the highest or second highest reason for not qualifying a DRO.<sup>6</sup> Other reasons cited as prevalent among the completed surveys by large plan sponsors included that it was unclear what specifically the DRO would like the record keeper or plan to do; and that a DRO was missing basic information, such as the name or last known mail address of the participant and each alternate payee was missing or incorrect; or the name of each plan to which the order applies was missing or incorrect. In addition, seven record keepers or third party administrators responded to our survey or provided information to us regarding the top reasons they did not qualify a draft order. All seven of our record keeper respondents ranked the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee was missing or not compatible with plan

<sup>6</sup>Two plans provided individual responses for its DB and DC plans, and we counted each as a discrete response where feasible.

provisions as the highest or second highest reason for rejecting a draft order. Six record keeper responses selected a DRO missing basic information—such as the name or last known mail address of the participant and each alternate payee was missing or incorrect; or the name of each plan to which the order applies was missing or incorrect—as the next highest reason for not qualifying a DRO.

Many DROs could not be qualified upon first review as a result of such missing information and errors. One large plan sponsor representing 400,000 DB and 400,000 DC participants estimated about half of the DROs it reviewed were able to be qualified as a QDRO upon first review by the plan. Another large plan sponsor that services about 124,000 DC plan participants and 190,000 DB plan participants estimated about 55 percent of the DROs it receives were able to be qualified upon first review. A legal services attorney for plan sponsors collectively representing 30,000 participants estimated that about half of the DROs she received were able to be qualified upon first review.

Information gaps persist despite the existence of various models offered by plans to help divorcing parties provide the correct information on DROs. Experts said that a “model QDRO”—a document developed by a plan sponsor or record keeper that provides plan specifics and necessary requirements and can be used as a template for drafting the order—was useful. The experts added that those parties who submitted DROs that adhered to the firm’s model QDRO had better success at having their DROs qualified as QDROs upon first review. All seven of the large non-public plan sponsors we received information from indicated that they had developed model QDROs and made them available to participants. In addition, DOL’s 2014 booklet that provides general guidance on QDROs includes an appendix that contains sample language for inclusion when drafting a QDRO. PBGC also has a booklet that includes model QDROs, tailored to the specific circumstances of the DB plans it trustees.<sup>7</sup> Many experts said that plans’ model QDROs were helpful, but also cautioned that, due to the individual nuances of certain plans, a “one size fits all” approach from the government or a model QDRO that is overly prescriptive would not work universally because of plan specific requirements.

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<sup>7</sup>These model QDROs are intended to be used after a DB plan has terminated and PBGC has become trustee to the plan. See *Qualified Domestic Relations Orders and PBGC* (February 2019).

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## Experts Said DOL Could Do More to Make Resources on QDROs Readily Available to Divorcing Parties

According to experts, the role of QDROs in divorce, including the process and requirements for obtaining one, is not well known or understood by the public. DOL has publications that highlight the challenges of planning for retirement, and some of these publications include information about the challenges of splitting assets in divorce. As noted earlier, DOL has a 2014 publication entitled “QDROs: The Division of Retirement Benefits Through Qualified Domestic Relations Orders”, as well as a handful of web-based background information published earlier regarding QDROs.<sup>8</sup> However, many experts said affected parties such as divorcing spouses may be unfamiliar with the term “QDRO” or “Qualified Domestic Relations Order” and were unaware of DOL’s 2014 publication. Experts also noted that many DROs are initially denied and said that some lawyers do not understand the requirements for a DRO to be qualified as a QDRO. Experts we interviewed generally were aware of the 2014 DOL publication and said it was helpful in providing answers to many technical questions, but said the general public was often unaware of it. None of the experts to whom we spoke provided us with copies of, or said they were aware of, the information issued by DOL prior to its 2014 publication.

**Text Box: Confusion regarding rules related to survivorship benefits when spouses divorce and a QDRO is pursued**

Experts told us that, in the event the participant in the retirement plan dies before the divorced spouse (alternate payee), the rules surrounding survivor benefits are particularly complicated and subject to different interpretations by plans. For example, PBGC officials told us one area not well understood is that surviving spouse benefits are generally not payable to an alternate payee unless specifically assigned in a QDRO. PBGC officials said the situations where this will cause a loss are complex and

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<sup>8</sup>See DOL Employee Benefits Security Administration, *QDROs, The Division of Retirement Benefits Through Qualified Domestic Relations Orders*, available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/qdros.pdf>. The three DOL-issued frequently asked questions (FAQs) that DOL officials told us were posted in 2002 include: (1) <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/qdro-overview.pdf>; (2) <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qdro-determining-qualified-status-and-paying-benefits.pdf>; and (3) <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qdro-drafting.pdf>. Our literature search did not yield these FAQs, nor did DOL cite them in our May 2019 initial discussion with agency officials.

can be a problem with both shared payment orders and separate interest orders. PBGC officials further stated that the situation where a former spouse has waited until after the participant has retired to obtain a DRO is an even bigger issue. In the context of DB plans in general, PBGC officials said, surviving spouse rights and separate interest assignments are no longer available after the participant's retirement date, which they said can significantly limit the benefits an alternate payee can claim.

Source: GAO analysis of interviews with experts and agency officials. | GAO-20-541

DOL may be missing opportunities to ensure that divorcing parties and other stakeholders are aware of the need for a QDRO to divide retirement benefits and understand what information must be included in a DRO for it to be deemed a QDRO.<sup>9</sup> Neither DOL's prior materials nor the 2014 publication may be readily accessible to a lay person pursuing a divorce who is unaware of the term "qualified domestic relations order." DOL's centralized page on its website for information on divorce until July 2020 listed only its 2014 publication, and did not include links to DOL's three FAQs related to QDROs.<sup>10</sup> In May 2020, DOL officials told us that although the FAQs were not currently posted on their centralized website, it would be feasible to do so. In July 2020, in written technical comments concerning our draft report, DOL officials stated the agency had posted

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<sup>9</sup>In certain situations, a divorce decree or other document can function as a QDRO. Further, divorcing parties may agree to allocate assets, including IRA assets, personal property, real property such as homes, and other assets in such a way that a QDRO is not pursued. For example, divorcing parties may choose to allocate the house and individual retirement account to one spouse, leaving the other spouse the entirety of his or her DB or DC retirement plan. ERISA establishes certain minimum standards and requirements for most private sector employer-sponsored retirement plans.

<sup>10</sup>DOL's "Separation & Divorce" web page for workers is at <https://www.dol.gov/agencies/ebsa/workers-and-families/separation-and-divorce>. We note, until July 2020, its 2014 booklet was the only publication included on the site that focuses on QDROs. The other publications listed on the website have more general titles and primarily focus on retirement and saving, generally. In May 2020 DOL officials stated that while none of these publications focus solely on divorce, they provide the important information workers need to know about their plan and saving for a secure retirement of which divorce and protecting these assets is one consideration. In July 2020, in response to our draft report, DOL officials stated the agency had posted the three sets of QDRO FAQs on the agency's Separation & Divorce web page in place of the booklet. DOL officials stated the QDRO FAQs have the same content as the 2014 QDRO publication, without the appendices, and were pulled from an earlier version of DOL's 2014 publication.

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the three sets of QDRO FAQs on the agency's Separation & Divorce web page in place of the 2014 publication.<sup>11</sup>

In addition to the FAQs, DOL provides educational seminars and other outreach to assist plan fiduciaries and other stakeholders. As part of this outreach, DOL has included some information on QDROs as part of presentations on broader topics, but has not conducted more targeted outreach. For example, agency officials told us in November 2019 that the agency mentioned QDROs briefly in fiduciary education seminars, retirement planning webcasts and other agency outreach, and that in September 2017 and September 2018, it had conducted events which, while focused on retirement plan issues generally, included some specific information on QDROs.<sup>12</sup>

However, the 2017 and 2018 sessions, entitled "What You Should Know About Your Retirement Plan," focused on a range of topics, but, without a more targeted link on EBSA's website, the public may be unaware they should access these resources for more information on QDROs. Many experts we spoke to, such as representatives of national family bar associations, said they believed additional outreach is warranted and would welcome DOL presenting or providing additional information. Specifically, several experts said it would be helpful if DOL could develop and publish a checklist of common documents and information needed to develop a DRO, and that such a checklist would help ensure that DROs are more likely to be qualified on first review. For example, PBGC's February 2019 publication on QDROs includes a checklist of questions

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<sup>11</sup>DOL officials stated the QDRO FAQs have the same content as the 2014 QDRO publication, without the appendices, and were pulled from an earlier version of DOL's 2014 publication.

<sup>12</sup>More specifically, DOL stated the events were webcasts and were titled "What You Should Know About Your Retirement Plan", September 13, 2017 webcast for the general public and "What You Should Know About Your Retirement Plan", September 20, 2018 webcast for the general public. In June 2020 we searched DOL's webpage listing its webcasts at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/seminars-and-webcasts> and did not find links to these webcasts.

for interested parties to review and ensure their DRO addresses before submitting it to PBGC.<sup>13</sup>

DOL has taken some steps to assist plans seeking to reduce complexity and costs by clarifying the process for QDROs. Specifically, DOL described in its 2014 QDRO handbook the benefit of plans outlining their QDRO procedures in detail as a way of minimizing administrative burden, cost, and confusion for participants and alternate payees. It suggests, for example, that plans describe information about the plan and the participant's benefits that are available to alternate payees, and the amount of time it will take to qualify a DRO. However, some experts suggested that additional resources from DOL, such as a checklist for participants or prospective alternate payees, would be helpful. DOL officials said that the agency has not developed such a checklist and noted that information about the QDRO process is available in its 2014 booklet. However, several experts we interviewed said this information should be more readily accessible in the form of a checklist, for example, and should be posted on the agency's centralized website.

Without taking additional action to enhance its information and make it more accessible to the public, DOL will not be able to ensure that participants and alternate payees have accessible and complete information to properly complete a QDRO to divide assets in divorce. Federal internal controls state that management should externally communicate the necessary quality information to achieve the entity's objectives, including to external parties such as the general public.<sup>14</sup> Without clearer information and more targeted outreach regarding how to complete QDROs, involved parties—including participants, prospective alternate payees, and family law practitioners—may spend unnecessary time and resources drafting orders that are unlikely to comply with federal law or plan requirements, resulting in plans not qualifying DROs. Moreover, some potential alternate payees may lose access to future retirement income from their former spouse's plan because they are unaware of the process of securing their rights through a QDRO.

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<sup>13</sup>PBGC's checklist includes questions such as "Does the order clearly specify the PBGC-trusted pension plan to which it applies?" and "Does the order include the names of the persons to whom the order applies?" As noted earlier, missing basic information such as the plan name or the names to whom the DRO applies are common reasons for denial of a DRO by plans.

<sup>14</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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## Alternate Payees May Face Difficulty Obtaining Information Needed to Develop a QDRO

Some experts told us that many prospective alternate payees have difficulty obtaining information about their spouse's retirement plan directly from the plan sponsor or administrator. Although ERISA requires plans to provide Summary Plan Description documents to all participants and beneficiaries, some experts said that prospective alternate payees often have difficulty obtaining information needed to complete a DRO, in part because plans are unclear on what information they are allowed to provide. DOL's 2014 QDRO booklet states the agency recognizes alternate payees, and prospective alternate payees, as beneficiaries for this purpose. However, some stakeholders we spoke with said DOL's 2014 QDRO booklet was often ignored or unknown.

We identified two approaches by stakeholders intended to help ensure that prospective alternate payees are protected and get access to key information to inform the development of a DRO:

- *PBGC Information Requests.* To help ensure that prospective alternate payees obtain the information they need to develop draft orders for plans' PBGC trustees, officials at PBGC told us they have developed a routine process.<sup>15</sup> Specifically, prospective alternate payees are able to request information regarding whether the participant is currently receiving benefits or, if not, the earliest date on which the participant's benefit payments may commence; the plan name; the actual or estimated amount of benefit; and the form in which the benefit is payable.<sup>16</sup>

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<sup>15</sup>PBGC trustees underfunded defined benefit plans in certain cases, including in the event of an employer's bankruptcy or if a plan has otherwise been terminated without sufficient assets to pay promised benefits.

<sup>16</sup>PBGC representatives stated that PBGC protects plan participants' data consistent with the Privacy Act of 1974, as amended, and PBGC implementing regulations, but that PBGC is able to share this information with prospective alternate payees, without the consent of the participant, because it is a routine use of the information. The content and form of a prospective alternate payee's request for this information is described in the Federal Register, as well as PBGC's QDRO publication. See 83 Fed. Reg. 6,247, 6,256 (Feb. 13, 2018) and *Qualified Domestic Relations Orders and PBGC*, available at <https://www.pbgc.gov/sites/default/files/qdro.pdf>.

- *California court form.* Some experts noted California's efforts to help participants become aware of the potential to obtain a QDRO. Multiple experts we spoke with identified a California court form that they said was a model for protecting prospective alternate payees' financial interests as they develop and attempt to qualify a DRO. The California form specifically addresses survivor benefits, which is something experts said can otherwise introduce complex issues.<sup>17</sup>

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## DOL Take Steps to Ensure that Plans Have Written Procedures Regarding QDROs

As described earlier, DOL has authority to interpret the QDRO provisions in Part 2 of Title I of ERISA and section 414(p) of the IRC, except as provided in IRC section 401(n).<sup>18</sup> Under both ERISA and section 414(p) of the IRC, plans are required to establish reasonable procedures to determine the qualified status of DROs and to administer distributions under QDROs.<sup>19</sup> In addition, DOL regulations require a plan's Summary Plan Description (SPD) to include a description of the procedures governing QDRO determinations or a statement indicating that participants can obtain a copy of such procedures from the plan administrator without charge.<sup>20</sup>

DOL assesses SPDs to, among other things, determine if plan administrators are complying with DOL regulations that require SPDs to include certain information regarding the plan's QDRO procedures. More

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<sup>17</sup>To see a copy of the California court form identified by experts we interviewed, see <http://www.courts.ca.gov/documents/fl348.pdf>.

<sup>18</sup>Under section 401(n) of the IRC, Treasury is authorized to prescribe such rules or regulations as maybe necessary to coordinate the requirements of sections 401(a)(13)(B) and 414(p) of the IRC, and the regulations issued by DOL thereunder, with the other provisions of chapter 1 of the IRC.

<sup>19</sup>See 26 U.S.C. § 414(p)(6)(B) and 29 U.S.C. § 1056(d)(3)(G)(ii).

<sup>20</sup>See 29 C.F.R. § 2520.102-3(j)(1). DOL officials also told us that it does not have authority to monitor and evaluate the development of draft orders into QDROs. Further, its 2014 booklet states it is the view of DOL that it does not have jurisdiction to determine whether draft order should be qualified or not, and that the jurisdiction to challenge a plan administrator's decision on whether to approve a draft order as a QDRO lies exclusively in the federal courts. As noted earlier, under 26 U.S.C. § 414(p)(6)(B) and 29 U.S.C. § 1056(d)(3)(G), plan QDRO procedures must be in writing and must provide for prompt notice of such procedures to each person specified in a draft order as entitled to the payment of benefits under the plan. See 29 U.S.C. § 1056(d)(3)(G)(ii)(I)-(II).

specifically, according to DOL officials, its Enforcement Manual provides for investigators to use the Reporting and Disclosure Checklist to determine whether a plan's SPD meets the style, format, and content requirements under the regulations.<sup>21</sup> To supplement their review, DOL officials said that some of its investigators also complete a Summary Plan Description checklist, which specifically asks whether the SPD contains a "description of procedures governing QDROs" as required under the same ERISA requirements. DOL stated that it did not have other documentation regarding monitoring and enforcement activities specific to QDROs.

DOL officials said that the agency has not targeted QDROs for enforcement efforts because concerns have not been elevated through its Benefits Advisor program. According to DOL officials, the agency uses inquiries to this program to help target its limited resources for conducting investigations.<sup>22</sup> DOL officials said that among 175,000 to 200,000 queries annually, it receives about 800 to 900 QDRO specific queries, and that these are generally related to the timeliness of service by the plan and are straightforward to resolve. DOL officials also said that its Benefit Advisors may make referrals to investigators, however, to date the concerns regarding QDROs shared in these queries have not required attention by enforcement staff.

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## Conclusions

With a substantial increase in the divorce rate among those aged 50 and over and roughly 2 million individuals divorcing in the United States each year, it is increasingly important that individuals are informed about their ability to seek a portion of their spouse's retirement upon divorce. When divorce occurs at older ages, the implications for the divorcing parties' financial security are even greater. Establishing a legal claim to a former spouse's retirement account in the event of divorce, however, requires a prospective alternate payee to navigate a process that can be costly and complex. The fees charged for QDRO review and qualification can vary

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<sup>21</sup>See Department of Labor, *Fiduciary Investigations Program* is available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/oe-manual/fiduciary-investigations-program>.

<sup>22</sup>According to DOL's website, interested parties may telephone DOL officials via its Benefits Advisor hotline for assistance with retirement plan administration or compliance, among other things.

widely, and DOL does not have information related to fees that might help the agency and plan sponsors determine whether these fees are reasonable. In addition, many DROs are not qualified by plans due to missing basic information and other errors, which can further increase the costs to divorcing parties. Further, obtaining the information required to prepare a DRO, and the steps for submitting it to a plan for qualification, can be complicated. The information DOL currently provides about developing and submitting DROs for qualification may not be readily available to interested parties that could benefit from it. However, continued outreach by DOL and additional information such as a checklist could be helpful. For some, the inability to understand and successfully navigate the process of obtaining a QDRO on their own may dramatically reduce their income in retirement.

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## Recommendations

We are making two recommendations to the Secretary of Labor.

- EBSA should explore ways to collect information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders and evaluate the burden of doing so. For example, DOL could consider collecting fee information as part of existing reporting requirements in the Form 5500. (Recommendation 1)
- EBSA should take steps to ensure that information regarding the requirements for QDROs is available and easily accessible for participants and alternate payees. For example, EBSA could develop a checklist of documents and information that parties could use to help draft a domestic relations order that would be more likely to be qualified as a QDRO on a plan administrator's first review. In addition, EBSA could conduct outreach focused on QDROs to practitioners, such as members of the family bar who may draft domestic relations orders. (Recommendation 2)

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Labor (DOL), the Department of the Treasury (Treasury) including the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC). All three agencies provided technical comments on the report, which we

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incorporated as appropriate. DOL provided formal comments, which are reproduced in appendix IV.

In its formal comments, DOL generally agreed with our recommendation to consider ways to collect additional information on fees related to QDROs and said it would informally engage with interested stakeholders, although the agency expressed concerns about establishing a reporting obligation. DOL stated that the reasonableness of fees depends on the facts and circumstances involved in a particular case and expressed concern about imposing a regulatory burden to collect aggregate information that it said would not likely provide a better understanding of the reasonableness of such fees. However, there may also be ways to collect information about QDRO-related fees that minimizes the burden on plans. For example, DOL could consider collecting information on QDRO-related fees through the Summary Plan Description checklist used by enforcement staff. In addition, in the course of our work, DOL officials told us that the agency has never undertaken an overall examination of plan practices related to fees for QDRO review and qualification. In light of this, we believe exploring ways to collect QDRO-related fees may enable DOL to better understand trends in fees or discern outlier plan fees that warrant further consideration. We encourage DOL to continue to consider options for collecting QDRO-related fee data in the most effective and efficient manner as this key information could enhance agency's ability to conduct its mission of protecting plan participants.

In its formal comments, DOL generally agreed with our recommendation that it should take steps to ensure that information regarding the requirements for QDROs is available and easily accessible. DOL stated that, in response to our recommendation, the agency posted the three sets of QDRO FAQs on its web page in July 2020, and we have amended our recommendation to remove reference to the FAQs as a result. We commend DOL for this action. DOL also stated it would continue to work with stakeholders, including family law bar practitioners and conduct additional outreach as recommended in our report. We appreciate DOL's willingness to take this step, and we encourage DOL to consider making additional resources available that would better ensure that the process for obtaining a QDRO is clear and accessible for participants and alternate payees. For example, our recommendation suggests that DOL could consider developing a checklist of documents and information that parties could use to help draft a domestic relations order likely to be qualified as a QDRO on a plan administrator's first review. DOL stated that such a checklist may not be needed because similar information is included in an existing publication available on the agency's website.

However, our findings support the need for more accessible information given the high number of DROs that are not qualified because they do not include basic information, which a checklist could readily identify for divorcing parties. A checklist was suggested by several experts as a way to make the technical requirements of a QDRO more user-friendly. For example, PBGC has provided one for plans it administers. Making sure that accessible information on the qualification process of DROs is available would help participants and alternate payees navigate the process in a more timely and cost-effective manner.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Labor, the Director of PBGC, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact us at (202) 512-7215 or [nguyentt@gao.gov](mailto:nguyentt@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Sincerely yours,



Charles A. Jeszeck, Director  
Education, Workforce, and Income Security Issues



Tranchau (Kris) Nguyen, Director  
Education, Workforce, and Income Security Issues

# Appendix I: Objectives, Scope, and Methodology

This report examines what is known about: (1) the number of Qualified Domestic Relations Orders (QDRO) recipients; (2) the fees and other expenses for processing QDROs; and (3) the reasons plans do not initially qualify domestic relations orders, and challenges experts identify regarding the QDRO process.

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## Identifying the Number of QDRO Recipients

To examine what is known about the number of QDRO recipients, we conducted two surveys and reviewed several widely used research databases to determine if they included any variables that would capture the number of QDROs, and found one with relevant data that we analyzed. We supplemented these findings with information from surveys of the largest plan sponsors and record keepers and interviews with agency officials and outside experts.

To obtain information about the number of QDRO recipients, we surveyed two groups: (1) the 10 largest private sector plan sponsors identified by *Pensions and Investments* at the beginning of 2019,<sup>1</sup> and (2) 29 record keepers and “third party” administrators from the SPARK Institute.<sup>2</sup> Of the 10 largest plan sponsors, we received seven responses.<sup>3</sup> Of the 29 record keepers and third party administrators, we received seven responses. Because any data we obtained comes from judgmentally selected groups and because we received so few responses, it is not generalizable. However, the seven plan sponsors represent more than 1.5 million defined benefit plan (DB) participants and about 1.4 million

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<sup>1</sup>*Pensions and Investments* is a news publication written for pension, portfolio, and investment management executives in the institutional investment market.

<sup>2</sup>The SPARK Institute’s membership includes record keepers and other firms that provide services to plans, and as such, process any QDROs for the approximately 95 million plan participants these members collectively serve.

<sup>3</sup>Two plans provided individual responses for its defined benefit (DB) and defined contribution (DC) plans, and we counted these responses as discrete responses where feasible.

defined contribution (DC) plan participants, and the seven record keepers and third party administrators represent at least 10.8 million defined contribution plan participants.<sup>4</sup> We are confident that the data provided represents the range of QDROs in effect.

To find a source of relevant data regarding the number of QDROs, we reviewed data documentation including variable lists and codebooks for the following four nationally representative survey databases:

- The Current Population Survey (CPS),<sup>5</sup>
- The Health and Retirement Study (HRS),
- The Survey of Consumer Finances (SCF), and
- The Survey of Income and Program Participation (SIPP).<sup>6</sup>

The CPS and SIPP contained no variables relating to QDROs or the disposition of retirement benefits in the event of a divorce, although we did analyze SIPP data to determine the prevalence of divorce among U.S. adults. The SCF, a survey administered by the Federal Reserve every 3 years to U.S. families that collects comprehensive data on their finances, yielded too small a sample size to report reliable results. The SCF captures payment of pension or retirement benefits to divorced or separated spouses. Specifically the survey question asks respondents who said they are receiving a pension or disability payment, “Is this a payment or account from a (current job), past job, a disability or military benefit, former spouse’s pension, or something else?” It also includes variables on demographic characteristics including age, income, race, and education level. However, once we isolated the cases that were suitable for analysis, there were not a sufficient number to provide statistically reliable results.

The HRS contained sufficient relevant data to report reliable results and the numbers of respondents that lost a claim to a former spouse’s pension or retirement benefit. It includes a variable that gauges what may

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<sup>4</sup>Three record keepers provided the number of participants they represent in a manner we could report; three record keepers did not provide such information and one record keeper we are not reporting information because of data quality concerns.

<sup>5</sup>The CPS, conducted by the U.S. Census Bureau and the Bureau of Labor Statistics, is a survey of the U.S. population that collects an array of data on economic and social well-being.

<sup>6</sup>The SIPP, conducted by the U.S. Census Bureau, is a survey of U.S. households conducted over a multi-year period that collects data on their income and finances and participation in federal assistance programs.

happen with retirement benefits in the event of a divorce, although it does not ask if a QDRO is used. The HRS is a project of the University of Michigan's Institute for Social Research that is funded through the National Institute on Aging and the Social Security Administration. This biennial longitudinal survey collects data on individuals over age 50, gathering information on marital status, retirement plans held, and income from retirement plans. Each biennial period is referred to as a "wave." The HRS includes both members of a couple as respondents. Currently 13 waves of core data are available from 1992 to 2016, with about 18,000 to 23,000 participants in any given wave. The initial 1992 cohort consisted of respondents who were 51 to 61 years old, and these respondents were interviewed every 2 years since 1992. New cohorts have been added over time to maintain the representation of the older population from pre-retirement through retirement and beyond. We used data from 2008 to 2016 for our analyses. We weighted the data and calculated standard errors to reflect HRS guidance based on our sample size and design.

The HRS data include a variable that identifies individuals who reported losing a claim to a former spouse or partner's pension or retirement benefits. The question capturing this information specifically asks respondents who are either widowed or divorced, "Did you lose any part of your claim on your former (husband's/wife's/partner's) pension?" This question is only asked to persons who report the death of or divorce or separation from their spouse since the last time they were surveyed. As with the SCF, the HRS also contains numerous variables that capture detailed demographic characteristics of respondents, including those relevant to our objective. We identified and included in our analysis variables measuring race and ethnicity, age, income, value of assets held, and education level. We identified and isolated cases of respondents who answered the question on losing a claim to their former spouse's retirement benefits, and compared those who reported losing claim rights to those who reported not losing them across the five demographic characteristics.

We identified all cases where the respondent was asked this question in the HRS surveys administered from 2008 through 2016. This resulted in a sample size of about 4,200. However, a large majority of these cases were from respondents whose former spouse died, leaving them widowed. After removing these cases, we had a new sample size of 775, representing those individuals who were divorced or separated since the previous wave. These cases were sufficient to provide statistically reliable results for most of the demographic comparisons. We also considered that the differences between the groups that lost a claim and those that

did not may result from differences in access to a retirement benefit. From our sample of 775 cases, we identified those who reported receiving income or having a benefit from a spouse's retirement plan in any of the previous three waves. This resulted in a sample of 240 cases from which we did not obtain statistically reliable results for all five demographic characteristics we analyzed.

We performed a data reliability assessment of the HRS variables we included in our analyses. We reviewed technical documentation, conducted electronic data tests for completeness and accuracy, and contacted knowledgeable officials with specific questions about the data. We determined that the data for the variables we used were sufficiently reliable for the purposes of this reporting on the numbers of respondents that lost a claim to a former spouse's pension or retirement benefit.

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## Identifying Fees and Other Expenses for Processing QDROs

To examine what is known about the fees and other expenses associated with having a DRO qualified, we conducted surveys of plan sponsors and record keepers, the results of which are non-generalizable, as detailed above, and 18 semi-structured interviews of experts. Stakeholders and experts we interviewed included; plan sponsors or record keepers and administrators, and 18 other persons or firms that represent those interests; persons or entities that represent the interests of alternate payees; persons or firms that provide QDRO drafting and processing services, divorce attorneys and family court judges, and other legal practitioners; non-partisan research institutions; as well as officials from the Department of Labor (DOL), Pension Benefit Guaranty Corporation (PBGC), and the Department of Treasury including the Internal Revenue Service (IRS). We asked these parties for information they could provide about the types of QDRO related fees charged to participants and alternate payees, whether they were aware of any data bases or repositories on fees, and their perceptions about the reasonableness of these fees.

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## Identifying Reasons for Not Qualifying DROs and Other Challenges

Our surveys included questions asking plan and record keeper and third party administrator respondents to rank the propensity for encountering common errors upon submitting a DRO to a plan for qualification, and

areas for improvement in the process, which allowed us to identify challenges that they and experts identified regarding the QDRO process. This approach had several limitations, as detailed above. As such, information in this section is not generalizable. We supplemented these findings with the results of semi-structured interviews of 18 knowledgeable stakeholders and experts, as described above. We asked these knowledgeable stakeholders and experts about observations and experiences on the regulatory and practical frameworks in the QDRO process. However, because this information is based on expert interviews and is not necessarily representative of the full range of views and opinions, we are not able to generalize the experiences and opinions of experts to the entire industry or population as a whole. We interviewed agency officials at DOL, PBGC, and Treasury including IRS. We reviewed relevant federal laws, regulations, and guidance. We also reviewed relevant existing academic and industry literature.

# Appendix II: Retirement Plan Participant Counts and Estimates of Domestic Relations Orders (DROs) Qualified by Plan Sponsors and Record Keepers Surveyed by GAO

We obtained data on the number of defined benefit and defined contribution plan participants and the number of Domestic Relations Orders (DRO) reviewed through surveys of the 10 largest non-public plan sponsors ranked by total fund assets, plan record keepers who are members of the SPARK institute,<sup>1</sup> and through interviews with plan representatives. Table 4 below shows the data provided by each six of the 10 largest non-public plan sponsors, three record keeper or third party administrators, and two other plan sponsors (not among the largest non-public plan sponsors) that responded to our survey in a manner that allowed us to calculate estimated ratios of QDROs to participants.<sup>2</sup> Although it is not comprehensive or representative of the general population, most of the entities that responded represent large numbers of plan participants, enabling us to estimate a ratio of QDROs to plan participants from a large participant population.

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<sup>1</sup>The SPARK Institute's membership includes record keepers and other firms that provide services to plans; our survey was routed to about 29 members who are record keepers or third-party administrators of retirement accounts, and as such, process QDROs for the approximately 95 million plan participants these members collectively serve.

<sup>2</sup>Data from one large plan sponsor and from four record keepers are not included in this table because the data provided were either incomplete or unreliable.

**Appendix II: Retirement Plan Participant  
Counts and Estimates of Domestic Relations  
Orders (DROs) Qualified by Plan Sponsors and  
Record Keepers Surveyed by GAO**

**Table 4: Estimated Ratio of Domestic Relations Orders (DROs) Qualified by Selected Large Plan Sponsors and Plan Record Keepers, to Plan Participants in Last 10 Years**

Description of entity (method of obtaining information)	Number of plan participants	Estimated number of DROs qualified in the last 10 years	Approximate estimated ratio of QDROs to participants
Plan sponsor #1	400,000 in DC plans	10,000 <sup>a</sup>	1:40
	400,000 in DB plans	15,000	1:27
Plan sponsor #2	208,200 in DC plans	10,300	1:20
	380,000 in DB plans	13,100	1:29
Plan sponsor #3	277,000 in DC plans	2,850	1:97
	251,000 in DB plans	1,780	1:141
Plan sponsor #4	180,300 in DC plans	2,750	1:66
	230,000 in DB plans	3,000	1:77
Plan sponsor #5	200,000 in DC plans	2,300	1:87
	127,000 in DB plans	1,700	1:75
Plan sponsor #6	123,800 in DC plans	5,000	1:25
	190,200 in DB plans	5,000	1:38
Record keeper #1	9,522,449 in DC plans	120,000	1:79
Record keeper #2	1,252,200 in DC plans	5,000	1:250
Record keeper #3	52,900 in DC plans	3,300	1:16
Pension Benefit Guaranty Corporation (PBGC)	1,555,000 in DB plans	16,030 <sup>b</sup>	1:97
A multiemployer plan	653,700 in DB plans	13,897 <sup>c</sup>	1:47

Source: GAO analysis of information collected from survey responses of large non-public plan sponsors or their third-party administrators, survey responses of SPARK member firms that serve as plan record keepers, or through interviews with representatives of plan sponsors or administrators and with PBGC. | GAO-20-541

Notes: We did not capture the number of participants covered by these entities who divorced during the time period in the survey. Therefore we cannot estimate the ratio of Qualified Domestic Relations Orders (QDROs) qualified to participants who divorced over the past 10 years. Duplicate counting of participants is also possible in two respects: (1) Among the plan sponsors, participants may be enrolled in both defined contribution (DC) and defined benefit (DB) plans; and (2) some of the record keepers surveyed may be servicing plans sponsored by the responding plan sponsors. We did not collect data to test for these possibilities. Data from one large plan sponsor and from four record keepers are not included in this table because the data provided was either incomplete or unreliable.

<sup>a</sup>These numbers are 10-year estimates based on information provided by the plan sponsor for a smaller number of years. For example, the plan sponsor with 400,000 DC and DB plan participants reported to us that it had qualified 1,000 DC and 1,500 DB DROs in the past year. Accordingly, we estimated the firm had qualified 10,000 DC and 15,000 DB DROs in the last 10 years. As such, our ratios are also estimates.

<sup>b</sup>PBGC provided us with a complete count of QDROs in effect. Therefore, this figure is not a 10-year estimate.

<sup>c</sup>This count represents a ten-year estimate based on a three-year count of 4,169 QDROs qualified that plan representatives provided us. As such, our ratios are also estimates.

# Appendix III: Detailed Findings from Analysis of Health and Retirement Study (HRS) Data

In addition to identifying the overall extent to which persons who were divorced or separated from a spouse reported losing at least part of their claim to that former spouse's retirement benefits, we used Health and Retirement Study (HRS) data to analyze the demographic characteristics of respondents who lost pension claims and those who did not. The HRS is a longitudinal panel study conducted by the Institute for Social Research at the University of Michigan. Every 2 years, it surveys a representative sample of between 18,000 to 23,000 people in America and their spouses who are 51 and older, and currently contains observations from 1992 to 2016.<sup>1</sup>

As we noted previously, these data do not show the definite presence of a Qualified Domestic Relations Order (QDRO), but the data allowed us to identify persons who reported either that they had lost or retained rights to their former spouses' retirement benefits as a result of a divorce. The question in the survey that provides this data asks respondents: "Did you lose any part of your claim on your former (husband/wife/partner)'s pension?"

We note that some respondents may not have been aware that their former or separated spouse had a retirement plan to which they might have a claim. They would not have been asked the question on losing claim rights to the former spouse's pension because they are only asked it if they responded to a prior question affirming that their former or separated spouse had a retirement plan to which they might have a claim. Consequently, our results could underestimate the extent to which divorced persons lost or retained rights to their divorced or separated spouses' retirement plans. Further, the extent of this underestimation could vary with the demographic characteristics of respondents. It is

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<sup>1</sup>Full data for the 2018 survey was not available as of July 20, 2020.

possible that some individuals may be less likely to be aware that (1) they could claim part of their former spouse's retirement benefits, or (2) that their former or separated spouse had a retirement plan to which they potentially could have a claim. Therefore, our results could underestimate the extent to which divorced persons lost or retained rights to their divorced or separated spouses' retirement plans, and this underestimation could be greater for some groups, such as more historically disadvantaged groups.

Our analysis found that, overall, a greater percentage of persons from more historically advantaged demographic groups—such as non-Hispanic Whites, those with post-secondary education, and high-income earners—reported having lost a claim to their former spouse's retirement benefits.<sup>2</sup> They apply to the true percentage who reported losing a claim, not the true percentage who actually lost a claim. As we reported earlier, an estimated 18 percent of persons who were divorced or separated from 2008 to 2016 reported losing at least part of their claim to the former spouse's retirement benefits, while an estimated 82 percent of such persons reported they did not.<sup>3</sup>

We repeated our analysis limiting it to persons who also reported that their former spouse had a retirement plan to which they might have a claim. Of the people who reported in previous waves of the HRS survey that their households were receiving income from a spouse's retirement plan or that their spouse had a pension plan at their current job, we found an estimated 31 percent reported losing at least part of their claim to those plans upon divorce from the spouse with the plan, while an estimated 69 percent reported not losing a claim.<sup>4</sup> In this group, a higher percentage of persons from more historically advantaged demographic

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<sup>2</sup>All margins of error presented in this report are at the 95 percent confidence level, unless otherwise stated.

<sup>3</sup>Margins of error of +/- 3.8 percent at the 95 percent confidence level.

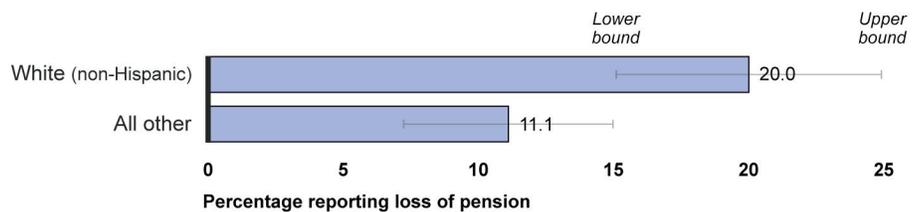
<sup>4</sup>Margins of error of +/- 5.3 percent at the 95 percent confidence level. Of the people who did not report having a plan in prior waves, we found that 9 percent also reported losing a plan. According to officials at RAND—an entity that maintains files of HRS demographic data for public use and analysis—this could be because some people may have plans from periods before the HRS survey. See appendix 1 for discussion of this and other data reliability issues.

groups were estimated to have lost a claim to their former spouse's retirement benefits.<sup>5</sup>

Looking at specific demographic characteristics of divorced persons, our analyses of the HRS data found the following based on responses from 2008 through 2016:

- We found that a higher percentage of non-Hispanic Whites reported having lost a claim to their former spouse's retirement benefits, than did persons in all other racial/ethnic groups (see fig. 3). The difference was statistically significant at the 95 percent confidence level. When we limited our analysis to persons who reported their former spouse had a retirement plan to which they could make claim, non-Hispanic Whites remained the group with the higher estimated percentage who reported losing a claim to that plan and the difference remained statistically significant at the 95 percent confidence level.

**Figure 3: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse's Retirement Benefits, by Race and Ethnicity, 2008 to 2016 (n=775)**



Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

Notes: The race and ethnicity estimated percentages have the following margins of error at the 95 percent confidence level:

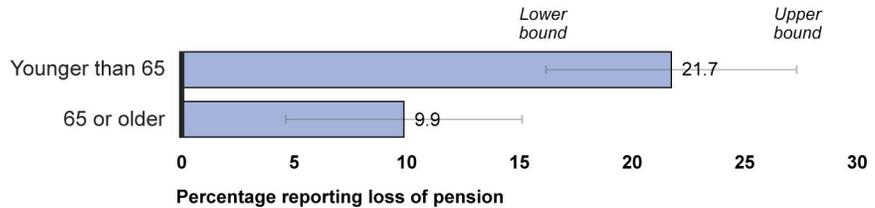
White, (non-Hispanic), +/-4.9 percent; all other, +/-3.9 percent.

<sup>5</sup>As noted earlier, HRS does not verify whether a respondent reporting he or she lost a claim to a former spouse's pension is supported by financial statements or other documents, and our analysis identified a total of 775 respondents who were divorced or separated and responded to the question asking if they had lost a claim to a spouse's pension from 2008 to 2016. We also identified those respondents whose former spouse's in previous waves of the survey reported they had a pension, and found from 2008 to 2016 there were 240 such respondents. We note that some of the difference in the numbers could be attributed to newly separated or divorced spouses realizing only at the time of divorce that their former spouse had a pension to which they may have been entitled.

**Appendix III: Detailed Findings from Analysis of Health and Retirement Study (HRS) Data**

- We found that a higher percentage of persons under age 65 reported having lost a claim than did persons 65 or older (see fig. 4).<sup>6</sup> The difference between the two groups was statistically significant at the 95 percent confidence level. This pattern remained the same when we limited our analysis to persons who reported their former spouse had a retirement plan to which they could make a claim.

**Figure 4: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse’s Retirement Benefits, by Age, 2008-2016 (n=775)**

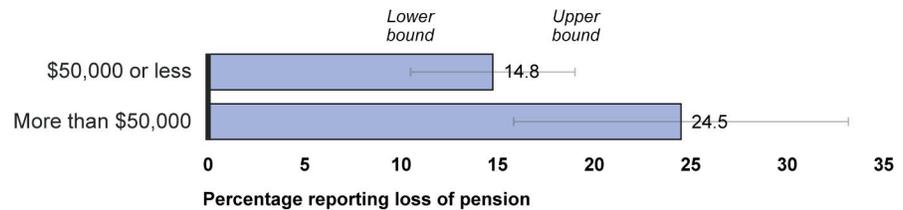


Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

Notes: The age category estimated percentages have the following margins of error at the 95 percent confidence level: Less than 65 years of Age, +/-5.6 percent; Aged 65 or Older, +/-5.3 percent.

- We found that a higher percentage of persons with incomes over \$50,000 reported having lost a claim than did persons with incomes of \$50,000 or less (see fig. 5). The differences between the groups were statistically significant at the 93 percent confidence level. The pattern remained the same when we limited our analysis to persons who reported their former spouse had a retirement plan to which they could make a claim.

**Figure 5: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse’s Retirements Benefits, by Income Level in 2018 dollars, 2008-2016 (n=775)**



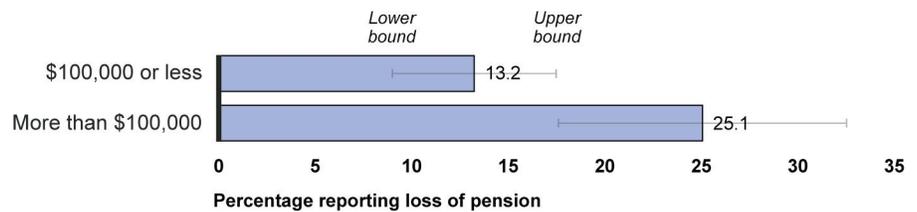
Source: GAO analysis of Health and Retirement Survey data.. | GAO-20-541

Notes: The income level estimated percentages have the following margins of error at the 93 percent confidence level: More than \$50,000, +/-8.7 percent; \$50,000 or less, +/-4.3 percent.

<sup>6</sup>As noted earlier, the HRS surveys only individuals who are 51 years of age or older, and their spouses.

- We found that a greater percentage of persons with assets over \$100,000 reported having lost a claim than did persons with assets of \$100,000 or less (see fig. 6). The differences were statistically significant at the 95 percent confidence level. The pattern remained the same when we limited our analysis to persons who reported their former spouse had a retirement plan to which they could make claim, but the results were not statistically significant.

**Figure 6: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse’s Pension, by Assets in 2018 Dollars, 2008-2016 (n=767)**

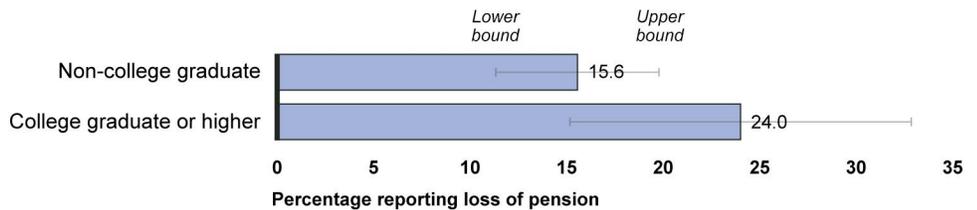


Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

Notes: The asset level estimated percentages have the following margins of error at the 95 percent confidence level: More than \$100,000, +/-7.5 percent; \$100,000 or less, +/-4.3 percent.

- We found a higher percentage of persons who completed college or a higher level of education reported having lost a claim than did persons who did not complete college (see fig. 7). However, our analysis did not find the differences between these groups to be statistically significant at the 95 percent confidence level.

**Figure 7: Estimated Percentage of Persons who Reported Having Lost a Claim to a Former Spouse’s Retirement Benefits, by Education Level, 2008 to 2016 (n=775)**



Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

Notes: The education level estimated percentages have the following margins of error at the 95 percent confidence level: non-college graduation: +/-4.3 percent; college graduate or higher: +/-8.9 percent.

When we limited our analysis to persons who reported their former spouse had a retirement plan to which they could make claim, persons who completed college remained the group with the highest estimated percentage who reported having lost a claim to that plan. However, with only a 5-percentage-point difference with the group who did not complete college, these results are not statistically significant.

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# Appendix IV: Agency Comments from Department of Labor

**Appendix IV: Agency Comments from  
Department of Labor**

**U.S. Department of Labor**

Employee Benefits Security Administration  
Washington, D.C. 20210



July 15, 2020

Charles A. Jeszeck  
Director, Education, Workforce, and Income Security  
United States Government Accountability Office  
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled "Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings" (GAO-20-541). The draft report contains two recommendations for the Department of Labor (Department):

- EBSA should explore ways to collect information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders and evaluate the burden of doing so. For example, DOL could consider collecting fee information as part of existing reporting requirements in the Form 5500. (Recommendation 1)
- To help make the process for obtaining a QDRO more clear and accessible for participants and alternate payees, EBSA should take steps to ensure that information regarding the requirements for QDROs is available and easily accessible. For example, EBSA could post Frequently Asked Question documents related to QDROs on its centralized website and develop a checklist of documents and information that parties could use to help draft a domestic relations order likely to be qualified as a QDRO on a plan's first review, as well as conduct outreach focused on QDROs to practitioners, such as members of the family bar who may draft domestic relations orders. (Recommendation 2)

With respect to the first recommendation, EBSA does not currently collect information on fees that retirement plans charge to participants and alternate payees for QDRO review and qualification, either directly or as part of a general administrative charge against plan assets. Establishing such a reporting obligation would require the Department to engage in a public notice and comment process and obtain approval for such an information collection under the Paperwork Reduction Act. The Department will informally engage with interested stakeholders and consider this GAO recommendation as part of its process of establishing its semi-annual agenda of regulatory and deregulatory priorities. However, under ERISA, whether any particular fee structure for reviewing domestic relations orders is unreasonable is a case-by-case question, subject to the particular facts and circumstances involved. Thus, the Department is concerned that the collection of aggregate information that GAO suggests would impose a regulatory burden that would not be likely to result in enhanced oversight or a better understanding of the reasonableness of such fees.

With respect to the second recommendation, as noted in your report, EBSA's booklet, entitled *QDROs, The Division of Retirement Benefits Through Qualified Domestic Relations Orders*, is already accessible on the Department's website. Print copies are also available through EBSA's toll-free number (1-866-444-3272). Individuals interested in obtaining information concerning ERISA and employee benefit

**Appendix IV: Agency Comments from  
Department of Labor**

Charles A. Jeszeck  
Page 2

plans may call EBSA's toll-free number to talk to a benefits advisor. The booklet was prepared by EBSA to provide general guidance about QDROs to employers, plan administrators, participants, beneficiaries, prospective alternate payees, employee benefit professionals, and domestic relations specialists. It contains a series of Q&As, Departmental guidance in the form of advisory opinions, and sample QDRO language developed by the Department of Treasury and the Internal Revenue Service in consultation with the Department. The Department, nonetheless, will continue to work with stakeholders, including the family law bar, conduct outreach, and evaluate additional educational resources such as the ones suggested in your report. As recommended in the report, EBSA posted the three sets of QDRO FAQs on the Workers' divorce web page in place of the booklet.

Thank you again for the opportunity to review your draft report and recommendations. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



Jeanne Klinefelter Wilson  
Acting Assistant Secretary

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# Appendix V: GAO Contact and Staff Acknowledgement

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## GAO Contact

Charles A. Jeszeck and Tranchau (Kris) Nguyen at (202) 512-7215 or [nguyentt@gao.gov](mailto:nguyentt@gao.gov).

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## Staff Acknowledgments

In addition to the individuals named above, Sharon Hermes and Dave Lehrer (Assistant Directors), Michelle Munn (Analyst in Charge), Benjamin Bolitzer, Joel Marus, and Adam Wendel made key contributions to this report. Justin Dunleavy, Sheila R. McCoy, Jean McSween, Michael Naretta, Mimi Nguyen, Corinna Nicolaou, Dae Park, Rhiannon Patterson, Frank Todisco, and Jacob Wu also provided support.

# Appendix VI: Accessible Data

## Data Tables

**Accessible Data for Plan Administrators and Record Keepers Reported Reasons for Not Qualifying a Domestic Relations Order (DRO)**

na	Number of plans or record keepers	
	Most frequent reason	Next most frequent reason
Category		
Dollar amount or percentage of benefit was missing, or not compatible with plan provisions	6	7
Missing basic information, such as name or address	6	2
Unclear what the DRO would like plan to do	2	2
DRO requires plan to provide type or form of benefit not allowed	2	1
Other	0	5

Source: GAO survey of plan administrators and recordkeepers. | GAO-20-541

Appendix VI: Accessible Data

**Accessible Data for Figure 1: Hypothetical Process a Plan Administrator May Follow to Determine Qualified Status of a Domestic Relations Order**

Step one	Step two	Step three	Step four	Step five	Step six
Draft Domestic Relations Order (DRO) received by plan.	Plan pre-approves draft DRO for qualification (if not pre-approved, draft DRO can be amended and resubmitted).	Draft DRO submitted to court to be executed.	Court-issued DRO received by the plan for qualification.	Plan qualifies DRO as a Qualified Domestic Relations Order (QDRO) and sends it to both parties. Parties may dispute QDRO and seek to amend it.	Plan processes QDRO if parties waive dispute or after dispute period expires.

Source: GAO analysis of documentation and interviews with plan sponsors and service providers. | GAO-20-541

Appendix VI: Accessible Data

**Accessible Data for Figure 2: Plan Administrators and Record Keepers Reported Reasons for Not Qualifying a Domestic Relations Order (DRO)**

na	Number of plans or record keepers	
	Most frequent reason	Next most frequent reason
Category		
Dollar amount or percentage of benefit was missing, or not compatible with plan provisions	6	7
Missing basic information, such as name or address	6	2
Unclear what the DRO would like plan to do	2	2
DRO requires plan to provide type or form of benefit not allowed	2	1
Other	0	5

Source: GAO survey of plan administrators and recordkeepers. | GAO-20-541

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Appendix VI: Accessible Data

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**Accessible Data for Figure 3: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse's Retirement Benefits, by Race and Ethnicity, 2008 to 2016 (n=775)**

Percentage reporting loss of pension	
White (non-Hispanic)	All other
20.0	11.1

Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

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Appendix VI: Accessible Data

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**Accessible Data for Figure 4: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse's Retirement Benefits, by Age, 2008-2016 (n=775)**

Percentage reporting loss of pension	
Younger than 65	65 or older
21.7	9.9

Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

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Appendix VI: Accessible Data

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**Accessible Data for Figure 5: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse's Retirements Benefits, by Income Level in 2018 dollars, 2008-2016 (n=775)**

Percentage reporting loss of pension	
\$50,000 or less	More than \$50,000
14.8	24.5

Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

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Appendix VI: Accessible Data

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**Accessible Data for Figure 6: Estimated Percentage Who Reported Having Lost a Claim to a Former Spouse's Pension, by Assets in 2018 Dollars, 2008-2016 (n=767)**

Percentage reporting loss of pension	
\$100,000 or less	More than \$100,000
13.2	25.1

Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

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Appendix VI: Accessible Data

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**Accessible Data for Figure 7: Estimated Percentage of Persons who Reported Having Lost a Claim to a Former Spouse's Retirement Benefits, by Education Level, 2008 to 2016 (n=775)**

Percentage reporting loss of pension	
Non-college graduate	College graduate or higher
15.6	24.0

Source: GAO analysis of Health and Retirement Survey data. | GAO-20-541

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## Agency Comment Letter

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### Accessible Text for Appendix IV Agency Comments from Department of Labor

#### Page 1

July 15, 2020

Charles A. Jeszeck

Director, Education, Workforce, and Income Security

United States Government Accountability Office

Washington, DC 20548

Dear Mr. Jeszeck:

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- To help make the process for obtaining a QDRO more clear and accessible for participants and alternate payees, EBSA should take steps to ensure that information regarding the requirements for QDROs is available and easily accessible. For example, EBSA could post Frequently Asked Question documents related to QDROs on its centralized website and develop a checklist of

documents and information that parties could use to help draft a domestic relations order likely to be qualified as a QDRO on a plan's first review, as well as conduct outreach focused on QDROs to practitioners, such as members of the family bar who may draft domestic relations orders. (Recommendation 2)

With respect to the first recommendation, EBSA does not currently collect information on fees that retirement plans charge to participants and alternate payees for QDRO review and qualification, either directly or as part of a general administrative charge against plan assets. Establishing such a reporting obligation would require the Department to engage in a public notice and comment process and obtain approval for such an information collection under the Paperwork Reduction Act. The Department will informally engage with interested stakeholders and consider this GAO recommendation as part of its process of establishing its semi-annual agenda of regulatory and deregulatory priorities. However, under ERISA, whether any particular fee structure for reviewing domestic relations orders is unreasonable is a case-by-case question, subject to the particular facts and circumstances involved. Thus, the Department is concerned that the collection of aggregate information that GAO suggests would impose a regulatory burden that would not be likely to result in enhanced oversight or a better understanding of the reasonableness of such fees.

With respect to the second recommendation, as noted in your report, EBSA's booklet, entitled QDROs, *The Division of Retirement Benefits Though Qualified Domestic Relations Orders*, is already accessible on the Department's website. Print copies are also available through EBSA's toll-free number (1-866- 444-3272). Individuals interested in obtaining information concerning ERISA and employee benefit

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plans may call EBSA's toll-free number to talk to a benefits advisor. The booklet was prepared by EBSA to provide general guidance about QDROs to employers, plan administrators, participants, beneficiaries, prospective alternate payees, employee benefit professionals, and domestic relations specialists. It contains a series of Q&As, Departmental guidance in the form of advisory opinions, and sample QDRO language developed by the Department of Treasury and the Internal Revenue Service in consultation with the Department. The Department, nonetheless, will continue to work with stakeholders, including the family law bar, conduct outreach, and evaluate additional educational resources

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such as the ones suggested in your report. As recommended in the report, EBSA posted the three sets of QDRO FAQs on the Workers' divorce web page in place of the booklet.

Thank you again for the opportunity to review your draft report and recommendations. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,

Jeanne Klinefelter Wilson

Acting Assistant Secretary

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