

WHO QUALIFIES AS AN ALTERNATE PAYEE?

A frequently asked question by both attorneys and parties to a divorce is who can be an Alternate Payee.

The Employee Retirement Income Security Act (ERISA) at Title 26 and Title 29 of the United States Code), provide an identical definition of Alternate Payee.

The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

Unfortunately, this definition is of little help when you are trying to determine for QDRO purposes, who is an eligible Alternate Payee. This absence of clarity is due to a failure of specificity. What is generally sought is a clear answer to whether either of the following may be an Alternate Payee:

"Estate of the Alternate Payee"

Successor to a deceased Alternate payee

More helpful is: Title 29 1056(D)(3)(d)(i):

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,...

Based on this section, it is Troyan's view that a Qualified Defined Contribution Plan QDRO can provide as an Alternate Payee:

"estate of the Alternate Payee as a successor to the interest of the Alternate Payee"

More complicated, but possible, an Alternate Payee can, as part of the divorce process, require that the QDRO, provide a beneficiary for her award in the event of her death prior to receipt of her distributive (cash) award.

Alternatively, in a Qualified Defined Benefit Plan QDRO you may not provide that the "estate of the Alternate Payee as a successor to the interest of the Alternate Payee". This prohibition holds for both the Qualified Preretirement Survivor Annuity and the Joint and 50% Survivor Annuity.