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COVERTURE METHODS FOR DIVIDING DEFINED BENEFIT PENSIONS

“Coverture” is a method of determining the marital portion of an accrued benefit. There are three primary methods of coverture that may be used when dividing defined benefit pensions by qualified domestic relations order. The three primary methods of coverture are: the Tracking Method, the Accrued Coverture Method and the Prospective Coverture Method. Please see our article entitled “*Proposed Judgment Examples*” for language appropriate for a judgment of divorce for all three methods of coverture.¹

Tracking Method²

The Tracking Method divides the accrued benefit at the division date by treating the actual amount of increase in accrued benefit that has occurred between the marriage date and the division date as the marital portion. This method, applicable only if the participant had an accrued benefit at the date of marriage, generally produces a marital benefit that is intermediate (neither the smallest nor the largest marital benefit). Consequently, it is sometimes considered a fair compromise. **Many plans will not accept orders that use the Tracking Method because they are unwilling to compute accrued benefits at two different points in time. Accordingly, we strongly discourage the use of the Tracking Method unless the plan has agreed in advance to its use.**

The mathematical formula for the Tracking Method is (“AP” refers to Alternate Payee):

AP’s Awarded % x (Accrued Benefit at Division Date – Pre-Marital Accrued Benefit) = AP’s Monthly Awarded Benefit

This is an example of the Tracking Method with a 50% award, a \$1,200 per month accrued benefit at the division date and a \$700 per month accrued benefit at the date of marriage:

50% x (\$1,200 - \$700) = \$250 monthly benefit awarded to AP

¹ Visit WWW.QDRO.PRO and click on “Articles.”

² The Tracking Method is sometimes referred to as the “Direct Tracing Method” or the “Subtraction Method.”

Accrued Coverture Method³

The Accrued Coverture Method uses a coverture fraction to determine the marital portion of the participant's accrued benefit at the division date. The numerator is the participant's credited service earned by the participant during the marriage through the division date and the denominator is the participant's total credited service at the division date. This method can be used only if the participant had an accrued benefit at the date of marriage. The Accrued Coverture Method usually produces the smallest marital benefit but in many jurisdictions it is the most commonly used method for determining the marital portion.

The mathematical formula for the Accrued Coverture Method is:

AP's Awarded % x Accrued Benefit at Division Date x Credited Service Earned During the Marriage / Credited Service at the Division Date = AP's Monthly Awarded Benefit

This is an example of the Accrued Coverture Method with a 50% award, a \$1,200 per month accrued benefit at the division date, 10 years of credited service earned during the marriage and 30 years of total credited service at the division date:

50% x \$1,200 x 10 / 30 = \$200 monthly benefit awarded to AP

Prospective Coverture Method

Like the Accrued Coverture Method, the Prospective Coverture Method also uses a coverture fraction to determine the marital benefit but applies that fraction to the participant's accrued benefit at the date benefits first commence to either the participant or alternate payee (rather than the accrued benefit at the division date). The numerator is the credited service earned by the participant during the marriage through the division date (the same numerator used in the Accrued Coverture Method fraction) and the denominator is the participant's total credited service at the date benefits first commence to either the participant or the alternate payee. This method results in the alternate payee sharing benefits attributable to post-divorce benefit rate or salary increases but not attributable to post-divorce credited service. This can protect the alternate payee's awarded benefit from inflation during the period from the division date to benefit commencement. This method of coverture generally produces the largest marital benefit (depending upon the number of years after the divorce that the participant continues to accrue additional benefits and whether the participant's salary or benefit rate increases after the divorce). Unlike the other two coverture methods, the Prospective Coverture Method may be used even if the participant had no pre-marital accrued benefit.

³ The Accrued Coverture Method is sometimes referred to as "Frozen Coverture."

The mathematical formula for the Prospective Coverture Method is:

AP's Awarded % x Accrued Benefit at Date Benefits First Commence x Credited Service Earned During the Marriage / Credited Service at Date Benefits First Commence = AP's Monthly Awarded Benefit

This is an example of the Prospective Coverture Method with a 50% award, a \$2,200 per month accrued benefit at the date benefits first commence, 10 years of credited service earned during the marriage and 40 years of total credited service at the division date:

50% x \$2,200 x 10 / 40 = \$275 monthly benefit awarded to AP

We believe it best that the parties agree upon a coverture method and reflect that agreement in the judgment of divorce or settlement agreement.

This article is not a substitute for legal advice. If you need legal advice, please contact Jon Mallin at 248.865.4700 or by e-mail at JON@QDRO.PRO.