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DOL Issues Final Regulations on QDRO Timing

As required by the Pension Protection Act of 2006 (PPA), the DOL has issued final regulations on the timing and order of qualified domestic relations orders (QDROs). The regulations provide that a plan administrator cannot disqualify a QDRO solely because it is issued after or revises another domestic relations order or QDRO, or is issued after the plan participant's death, divorce, or annuity starting date.

Background

A qualified domestic relations order (QDRO) is a domestic relations order issued pursuant to a state domestic relations law that relates to child support, alimony, or marital property rights, and gives an alternate payee (e.g., a former spouse) the right to receive all or a portion of a participant's benefits from a qualified retirement plan.

To satisfy a PPA directive, the DOL issued interim final regulations in 2007 relating to the timing and order of QDROs. (See our March 21, 2007 [For Your Information](#).) The DOL has now finalized these regulations, providing some additional clarifications.

DOL Final Regulations

The [final regulations](#), which are intended to clarify the statutory requirements for QDROs, largely track the interim regulations. Like the interim regulations, the final regulations provide that a domestic relations order otherwise meeting applicable ERISA requirements will not fail to be treated as a QDRO solely because of the time at which an order is issued or, in the case of multiple orders, the sequence in which orders are issued. Provided the order meets the requirements otherwise applicable to QDROs, it may still qualify as a QDRO when it is –

- issued after, or revises, another earlier domestic relations order or QDRO
- issued after a plan participant's death, divorce, or annuity starting date.

The final regulations modify Example 1 (domestic relations order issued after participant's death) and Example 3 (domestic relations order issued after annuity starting date) in the interim regulations and add a new Example 4 (type or form of benefits) to clarify the application of ERISA to QDROs.

Example 1

The revised Example 1 clarifies that a domestic relations order issued after the death of a participant does not fail to be a QDRO because the plan was not given notice prior to the participant's death.

Example 3

The revised Example 3 clarifies that a domestic relations order prepared after an annuity starting date requiring a portion of a participant's future payments to be paid to a former spouse during the participant's lifetime does not fail to be a QDRO. However, if the order required payments to the spouse for his or her lifetime, it would constitute a reannuitization with a new annuity starting date which would violate ERISA section 206(d)(3)(D)(i) (unless the plan permitted subsequent benefit elections after the participant's benefits commenced).

Example 4

The new Example 4 illustrates a situation in which a domestic relations order issued after an annuity starting date attempts to eliminate the straight life annuity based on the participant's life and instead provide the former spouse the right to receive all future benefits in the form of a straight life annuity based on his or her own life expectancy. This example assumes that the plan does not allow reannuitization with a new starting date. As in Example 3, the order does not fail to be a QDRO solely because it is issued after the annuity starting date. However, the order would fail because it requires the plan to provide a type or form of benefit, or option, not otherwise provided under the plan.

Effective Date

The final regulations are effective August 9, 2010.

Conclusion

Although the final regulations are substantially similar to the interim final regulations that have been in effect for some time, they provide some clarifications relating to certain QDRO timing issues. Plan administrators should review their current QDRO procedures to ensure that any needed updates are made.

Buck's consultants would be pleased to discuss this guidance with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.