



May 7, 2007

Filed Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attn: QDRO Regulation

Re: Comments on Interim Final QDRO Rule

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the Department of Labor's (DOL's) interim final rule on qualified domestic relations orders (QDROs) developed in response to a specific statutory directive contained in the Pension Protection Act of 2006 (PPA). The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council would like to commend the DOL for providing clarifying guidance with regard to the PPA requirement that a QDRO will not fail to be treated as a QDRO because the order is issued after, or revises, another domestic relations order or QDRO, or because of the time at which the QDRO is issued. Issuing guidance through examples – such as the clarification that a subsequent QDRO cannot assign benefits already awarded to another alternate payee under another QDRO – is particularly helpful.

The interim guidance specifically requests comments on areas in which additional examples would be beneficial. The Council recommends a series of additional examples in the final rule that would clarify situations other than two different alternate payees vying for the same benefits where earlier distributions could result in liability for double payments from the plan. Specifically, the regulations and examples should make it clear that the plan will not be liable if benefits have already been paid out under an initial QDRO.

For example, a subsequent QDRO between the same parties could award a smaller percentage of the plan benefits to an alternate payee who received a distribution based

on the first QDRO. An example could clarify that the plan is not obligated to seek reimbursement of distributions already made based on the earlier QDRO (either to the alternate payee or participant). Another example could clarify that a post-death QDRO received after a distribution is made to the beneficiary (either designated or by plan design) would not be qualified (except perhaps to the extent that unpaid benefits remain in the plan).

More clarification is needed for post-death QDROs submitted to defined benefit plans that provide no death benefit other than a surviving spouse annuity. An example clarifying whether a post-death order attempting to award a benefit to a former spouse could be qualified if the participant was not married on the date of death would be helpful. While the Council believes that defined benefit plans need certainty and closure and that such orders should not be implemented (and these are not benefits that the plan provides outside of QDROs), any ability to submit a QDRO in this situation should have a limited time period. Otherwise, the defined benefit plan must hold open the benefit of any participant who has ever been married indefinitely. Examples should also clarify treatment of post-death domestic relations orders that are contrary to a divorce decree or property settlement agreement (perhaps the original decree was silent or awarded the entire benefit to the participant).

Additional (or more detailed) examples would be helpful to illustrate that defined benefit plan QDROs issued after the annuity starting date cannot change the measuring life or lives for the distribution, or indirectly affect previous payments. Although the interim guidance contains an example splitting a single life annuity payment, these additional clarifications would provide certainty so that, for example, a potential alternate payee could not file a QDRO changing a single life annuity to a joint and survivor annuity when the participant is near death. The guidance should also clearly indicate that a post-annuity starting date QDRO can only affect payments made at a future date after the domestic relations order or QDRO is issued.

Again, we appreciate the opportunity to comment on the interim final QDRO regulations for your consideration in drafting final regulations. We believe that the American Benefits Council offers an important and unique perspective of the employer sponsors of, and service providers to, retirement plans and we would be happy to provide any additional information you might need as you work through the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan M. Jacobson". The signature is fluid and cursive, with a large loop at the end.

Jan M. Jacobson
Director, Retirement Policy