

U.S. Chamber of Commerce



May 7, 2007

Employee Benefits Security Administration
Office of Regulations and Interpretations
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: QDRO Regulation: Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders

Dear Sir/ Madam:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the request for comments from the Employee Benefits Security Administration (“EBSA”) on the Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders.¹ The U.S. Chamber of Commerce is the world’s largest business federation representing more than three million businesses and organizations of every size, sector and region, with substantial membership in all 50 states. These comments have been developed with the input of member companies that sponsor private retirement plans.

One very important duty of a plan sponsor is to process qualified domestic relations orders (“QDROs”). Domestic relations orders are issued by federal and state courts and must be determined to be “qualified” by the plan sponsor. While employers are able to accept the veracity of the domestic relations orders on their face, there are still a number of issues that the plan sponsor must contemplate. For example, the plan sponsor must determine if the benefit as assigned in the QDRO is available or has already been assigned to another beneficiary and whether the benefit can be distributed as explained in the domestic relations order. Consequently, the Chamber appreciates the provision of an interim rule and the effort to provide information about this topic as quickly as possible. We find the interim rule instructive in many respects and offer the following recommendations to augment the guidance provided.

A Plan Sponsor Decision Should Not be Overridden by a Subsequent QDRO. In many cases, plan sponsors are required to make decisions on benefits based on the best information available. If plan sponsors subsequently have to undo previous administrative decisions this would be an untenable burden. One particular example is a common law marriage determination. Plan sponsors are often called upon to make decisions about common law marriage (and subsequently a surviving spouse). Since

¹ 72 Fed. Reg. 10070 (March 7, 2007).

such marriages generally do not have standard documentation, the plan sponsor must make a decision based on the facts and circumstances presented. If a plan sponsor determines that a common law marriage existed and provides a surviving spouse benefit, the plan sponsor should be confident that this decision will not be overturned by a subsequent QDRO from another spouse.

The Final Regulations Should Include a Good Faith Provision. With respect to QDROs, plan sponsors are under an extraordinary administrative and fiduciary burden to ensure that benefits are determined and distributed correctly. Given the number of potential fact patterns, it is impossible for regulations to predict or address every single fact pattern. Consequently, a statement in the final regulations that plan sponsors may make determinations not explicitly illustrated in the examples under a good faith determination would be extremely helpful.

For example, the final illustration in the interim rule refers to previously assigned benefits under a 401(k) plan. In the illustration, the domestic relations order fails because the benefit has already been assigned to another spouse. Presumably, this analysis would be the same under a defined benefit plan where a domestic relations order assigns a benefit to a second spouse after the survivor benefit has already been assigned to a first spouse. Rather than providing examples of every slight variation of fact patterns, the final regulations should allow plan sponsors to apply a good faith analysis to fact patterns not explicitly stated in the examples.

Again, we sincerely appreciate the provision of the interim final rule. We appreciate your consideration of these comments and look forward to continue to working with you on this issue.

Sincerely,



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