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Sent: Friday, March 30, 2007 3:47 PM
To: EBSA, E-ORI - EBSA
Subject: Interim Rule Regarding QDROs

Below is our comment/question with regard to the recent Interim Rule relating to QDROs.

The Interim Rule includes an example stating that if a *non*-qualifying order is submitted to a plan *before* the participant dies, and then a *qualifying* order is submitted *after* the participant dies, then the order would qualify. This example seems consistent with a line of court cases that would allow a qualifying order to be submitted to a plan after the participant's death if the plan was on notice of a pending order before the participant's death.

However, the Rule seems to leave open the question of whether an order *first* submitted *after* the participant's death could qualify (assuming it satisfies all of the requirements for QDROs, including that it doesn't provide for benefits that are not otherwise payable under the terms of the plan). We are aware that there are some court decisions that would require a plan to accept such an order, particularly if the plan is not paying survivor benefits to another beneficiary.

We're hoping that the Final Rule will clarify whether a plan is required to accept a qualifying order (submitted after the participant's death) of which the plan had no notice prior to the participant's death, and also whether pre-death notice in a form other than a proposed order will be sufficient for purposes of the example discussed above.

Thank you very much.

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