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**From:** Robert Noble [mailto:robert.noble@qdrosource.com]  
**Sent:** Saturday, April 28, 2007 3:22 PM  
**To:** EBSA, E-ORI - EBSA  
**Subject:** Comment -- Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Order

QDRO Source is engaged in the business of preparing qualified domestic relations orders for attorneys and individuals either divorced or in the process of divorcing a spouse that is a participant in one or more qualified retirement plan.

Although not directly related to the timing issues raised by the subject legislation nor the proposed regulations, the following topic is of significant concern to potential Alternate Payees and their representatives.

To successfully negotiate or prove up the interest of the participant for division of the marital estate and to prepare the required documents, it is necessary to secure information about the plan and the participant's benefits under the plan from the plan administrator.

Generally, the parties are co-operative and the participant will provide a release/consent to the plan administrator to provide the required and requested information to the (soon to be) Alternate Payee.

Often, however, the parties are contentious and uncooperative about small issues, let alone significant asset divisions such as a retirement plan interest. It is in these circumstances that the normal processes which afford access to plan information (subpoena, temporary orders or even express consents) fall far short of the apparent original intent regarding availability of plan information to potential alternate payees (see 2-1, <http://www.dol.gov/ebsa/publications/qdros.html>).

Most plan administrators ignore the EBSA's stated policy and require either the participant's consent or a subpoena to provide any information to third parties (spouse, former spouse or their representatives). In some instances, even with the original, signed & notarized consent of the Participant, the plan administrators will provide information only directly to the Participant.

In our opinion, to simplify and expedite the access to necessary information, it is desirable to provide explicit statutory/regulatory language to implement the legislature's intent to simplify the division of marital interests in public retirement systems during divorce proceedings. To that end, 26 USC 414(p) or the regulations issued thereunder should be amended to add the following (or similar) language:

- (o) Information to spouse of participant in a plan
- (1) Upon receipt, from the spouse (or such spouse's counsel of record) of a participant in a plan to which this chapter applies, of a certified certificate of marriage, a certified petition initiating a proceeding for divorce and a request for disclosure of plan information, the plan administrator shall mail a notice of the submission to the participant.
- (2) Within 30 days following such mailing, the participant, or participant's counsel of record, may quash such request by submitting to the plan administrator certified court documents from the court of original jurisdiction indicating the dismissal of the original proceeding.
- (3) Within 45 days of the Plan Administrator's receipt of the initial request, the plan administrator shall provide all requested information to the spouse (or to the spouse's counsel of record) that would be available to the participant under the public retirement system's terms and administrative procedures.

The suggested language will provide a divorcing spouse the right to access to details about a participant spouse's plan information and benefits in a complete and timely manner, while offering safeguards to the participant's privacy by requiring that the request be initiated using certified official records and providing notice to and opportunity to dispute the request by the participant prior to disclosure of information. The proposed procedure uses existing documents and does not require the Court's time to hear and rule on what should be a routine disclosure under the circumstances.

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