

DOL Issues Final Regulations Validating Posthumous QDROs

For many years federal courts struggled with the enforceability of qualified domestic relations orders (QDROs) entered after the death of the plan participant. In an effort to resolve this confusion, the Pension Protection Act of 2006 (PPA) directed the Secretary of Labor to issue regulations clarifying that an otherwise valid QDRO would not fail to be enforceable solely because (i) of the time at which it is issued or (ii) its issuance after, or revision of, another QDRO.

Discharging its Congressional mandate, the DOL issued interim final regulations on March 7, 2007. Although the regulatory language itself did little more than paraphrase the provisions of the PPA directive, the interim final regulations included a few helpful examples. Even the examples, however, presented some ambiguities. A number of plan administrators and practitioners questioned, for example, whether a QDRO that was issued after the death of a participant would be enforceable if the plan administrator had no notice prior to the participant's death that domestic relations proceedings had commenced or that a QDRO might be issued.

The DOL has now finalized its interim regulations and clarified some of these ambiguities. Here are the highlights.

- The enforceability of a posthumous QDRO does not depend on pre-death notification to the plan administrator. If the QDRO is otherwise valid, it will be enforceable even if the plan administrator first learns of the domestic relations proceedings years after the participant's death.
- A domestic relations order issued after the participant's annuity starting date is generally enforceable. Such an order, for example, might require payment to an alternate payee of all or a portion of monthly payments otherwise being made to the participant. A domestic relations order received by a plan after the participant's annuity starting date would not be enforceable, however, if it required reannuitization with a new annuity starting date, unless the plan specifically authorized this option. An order would require reannuitization with a new annuity starting date if it directed the plan to substitute one measuring life for another or to change the form of benefit, such as from a single life annuity to a joint and survivor annuity. Similarly, according to the preamble to the regulations, a domestic relations order received after the annuity starting date would not be enforceable if it allocated to an alternate payee all or a portion of death benefits payable to another beneficiary, rather than lifetime benefits otherwise payable to the participant.

If you have questions or would like additional information about the rules relating to posthumous or other belated QDROs, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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