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DOL Issues Final QDRO Regulations

The Department of Labor ("DOL") recently issued final regulations relating to the issuance of domestic relations orders as required by the Pension Protection Act of 2006. The regulations, effective as of August 9, 2010, provide clarification to plan administrators, service providers, participants and alternate payees of the timing requirements applicable to qualified domestic relations orders ("QDROs").

ERISA provides that a participant's benefits under a pension plan may not be assigned or alienated. Under a limited exception to this rule, a participant's benefits may be assigned to an "alternate payee" (a participant's spouse, former spouse, child or other dependent), pursuant to a QDRO. A QDRO is a judgment or order made pursuant to a state domestic relations law that relates to child support, alimony payments or marital property rights.

The final regulations clarify that there are no time restrictions on the issuance of a QDRO. It may be issued after the death of the participant, regardless of whether the plan administrator was provided with notice of a potential domestic relations order prior to the participant's death. A QDRO may also be issued subsequent to a divorce and require the assignment of benefits to an alternate payee who would no longer meet the plan's definition of "surviving spouse." A QDRO can also be issued after the participant's annuity starting date, provided that it does not require an allocation to an alternate payee of some or all of the death benefit that, under the form of benefit in effect, is payable to another beneficiary (for example, a domestic relations order purports to assign to the participant's former spouse a shared payment of the participant's current spouse's survivor benefits under a qualified joint?and survivor annuity subsequent to the annuity starting date).

The regulations also clarify that a QDRO is valid even though it is issued after, or revises, a previous QDRO. A participant and spouse who have a valid QDRO may, prior to benefit commencement, enter into a subsequent order that increases or reduces the amount the spouse is entitled to under the plan. If the participant remarries and divorces a second time, a second QDRO may be issued assigning the new spouse a portion of the participant's benefit not already allocated under the first QDRO.

Plan administrators should review their QDRO procedures to ensure their procedures are not inconsistent with the new regulation. Plan administrators should also ensure that the QDRO administrator responsible for determining whether a domestic relations order constitutes a "QDRO" is familiar with the new rules.

If you have any questions about the new timing requirements or any other matter involving QDRO determinations, please contact a member of the Firm's Employee Benefits/Executive Compensation group.