

Qualified Domestic Relations Orders and Interim Final Rules  
from the Department of Labor

I. Background.

A Qualified Domestic Relations Order is a domestic relations order which meets certain requirements of ERISA Section 206(d)(3). The order provides that a participant's benefits under a retirement plan may be assigned to an alternate payee defined as the participant's spouse, former spouse, child or other dependent. Pursuant to ERISA, a plan administrator must determine, in accordance with specific procedures, whether an order is, in fact, qualified. If the order is qualified, then the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee named in the order in accordance with the terms of the order. The plan's procedures in determining an order, must be reasonable, must be in writing, must require prompt notification and disclosure of the procedures to participants and alternate payees upon receipt of an order, and must permit alternate payees to designate representatives for notice purposes. In addition, the plan administrator must complete the determination process and notify participants and alternate payees of its determination within a reasonable period after receipt of the order.

ERISA Section 206(d)(3)(H) provides specific procedural protection of a potential alternate payee's interest in a participant's benefits during the plan's determination process for a period of up to eighteen months during which the issue of the qualified status of the domestic relations order is being determined, whether by the plan administrator, by a court of competent, or otherwise. During this eighteen-month period, a plan administrator must separately account for any amounts that would have been payable to the alternate payee if that order had been immediately treated as a qualified domestic relations order and must pay these amounts

(including any interest thereon) to the alternate payee if the order is deemed qualified within the period. If the issue as to whether the order is a qualified domestic relations order is not resolved within the eighteen-month period, the plan administrator is to pay such amounts to the person who would have been entitled to the amounts if there had been no order. Any determination that an order is a qualified domestic relations order that is made after the close of the eighteen-month period is to be applied prospectively only.

If a plan fiduciary treats an order as a qualified domestic relations order (or determines that such an order is not a qualified domestic relations order) and distributes benefits in accordance with that determination, ERISA Section 206(d)(3)(I) provides that the obligations of the plan and its fiduciaries to the affected participants and the alternate payees with respect to the distribution shall be treated as discharged.

Some of the requirements of a domestic relations order to be qualified include the following:

1. The order must be a domestic relations order issued pursuant to a state domestic relations law that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a participant.
2. It must create or recognize the existence of an alternate payee's right to receive all or a portion of the benefits payable to a participant under the plan.
3. It must clearly specify the name and last-known mailing address of the participant and the name and mailing address of each alternate payee covered by the order.
4. It must clearly specify the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which the order applies, and each plan to which the order applies.

An order will fail to be a qualified domestic relations order if it requires the plan to provide any type or form of benefit, or any option not otherwise provided under the plan, to provide increased

benefits determined on the basis of actuarial value or to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

## II. Pension Protection Act of 2006 and Interim Final Regulations.

The Pension Protection Act of 2006 required the Secretary of Labor to issue regulations to clarify that: (1) a domestic relations order otherwise meeting the requirements of a qualified domestic relations order shall not fail to be treated as a qualified domestic relations order solely because: (a) the order is issued after, or revises, another domestic relations order; or (b) of the time at which it is issued. The Act also requires clarification that such orders are subject to all the same requirements and protections that apply to qualified domestic relations orders.

These new Department of Labor regulations are effective April 6, 2007, and provide helpful guidance in the form of specific examples that demonstrate how to determine whether a certain domestic relations order can become a qualified domestic relations order under special circumstances anticipated by the Pension Protection Act of 2006.

### A. Subsequent Orders.

One of the examples addressed in the regulations is subsequent domestic relations orders. Under the guidance, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order will not fail to be treated as a qualified domestic relations order solely because the order is issued after, or revises another domestic relations order.

Example 1 is an example of subsequent domestic relations orders between the same parties. A subsequent domestic relations order between a participant and former spouse may be qualified even if it reduces the benefits that were assigned to the former spouse under the initial qualified domestic relations order. Example 2 is for subsequent domestic relations orders

between different parties. A subsequent order between a participant and former spouse 2 may be a qualified domestic relations order only if the benefits assigned to former spouse 2 under the subsequent qualified domestic relations order were not already allocated to former spouse 1 under an earlier qualified domestic relations order.

B. Timing of Orders.

The regulations also clarify that an order that otherwise satisfies the qualified domestic relations order will not fail to qualify as a qualified domestic relations order solely because of the time at which it is issued. Example 1 provides for orders issued after a participant's death. If a plan administrator determines an order deficient and the participant dies shortly thereafter while actively employed, a second order correcting the defects in the first order may be submitted and considered even though the participant is no longer alive. Example 2 provides for orders issued after a participant's divorce. If a former spouse submits an order requiring that the former spouse be treated as the participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan, the order does not fail to be treated as a qualified domestic relations order solely because the ex-spouse no longer meets the definition of surviving spouse. Example 3 addresses orders issued after a participant's annuity starting date. If a participant begins receipt of a single life annuity after the spouse waived his or her surviving spousal rights, and thereafter the participant and spouse divorce, an order providing that the spouse should receive half the participant's annuity payments after a specified future date may still be considered as a qualified domestic relations order even though the order was issued after the annuity starting date.

C. Segregation of Payable Benefits.

Under ERISA, plan administrators must separately account for amounts covered by a domestic relations order during the time that the administrator is reviewing the order for compliance. An example in the regulations clarify that this requirement applies to each separate order. An order is issued under which a former spouse would begin receiving benefits immediately. The plan administrator separately accounts for amounts covered by the order. The plan administrator determines that it is not a qualified domestic relations order. Subsequently, the plan administrator receives a second order relating to the same parties. Notwithstanding the expiration of the first eighteen-month segregation period, the amounts covered by the second order must be separately accounted for by the plan administrator for another eighteen-month segregation period.

Plan administrators should incorporate these new Department of Labor regulations and examples in their qualified domestic relation order procedures and checklists.