



May 7, 2007

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
Washington, D.C. 20210

Attention: QDRO Regulation

To Whom It May Concern:

AARP is writing in response to the interim final rule issued under §1001 of the Pension Protection Act of 2006 (PPA) which provides that a domestic relations order that meets Employee Retirement Income Security Act (ERISA) requirements can be considered a valid qualified domestic relations order (QDRO) even though it is issued after an earlier order.

AARP generally supports EBSA's approach because it mirrors the PPA provision and includes examples using typical situations that have caused confusion for retirement plans and the courts. However, AARP recommends that EBSA consider providing general guidance to plans that the participant's benefits are the subject of a property settlement. This would help clarify expectations for plan sponsors who may be faced with the disposition of pension or §401(k) benefits after a participant's death. We also suggest that EBSA look for opportunities to disseminate information on the final guidance to family law attorneys through organizations such as the American Bar Association and the American Academy of Matrimonial Lawyers.

AARP advocates for policies that enhance and protect the economic security of individuals as they move from work to retirement. Of AARP's 38 million members, nearly half are still working and over 21 million are women. The disposition of pension benefits as the result of a divorce directly affects the retirement income security of the divorcing couple. Traditionally, the wife has suffered the most significant reduction in income.

Congress included §1001 in the Pension Protection Act of 2006 to clarify timing issues with respect to QDROs. Specifically, Congress directed the Department of Labor to issue regulations stating that a domestic relations order meeting the qualification requirements in ERISA would not fail to be classified as a QDRO

simply because it is issued after, or revises, an earlier domestic relations order or QDRO.

AARP supports the interim final rule because it parallels Congressional language and intent as well as provides illustrative examples based on real-life situations. AARP suggests that EBSA consider a clarification for the final rule, however. EBSA should consider changing Example (1) under §2530.206(c) *Timing*, to avoid possible confusion about posthumous QDROs. The example describes a situation where a domestic relations order submitted to a plan is rejected as not meeting all the QDRO requirements. Then, the participant dies before the corrected order is sent to the plan. The example makes clear that the second, corrected domestic relations order can qualify if it fulfills ERISA requirements. It is unclear from the example whether the key to recognition hinges on general notice to the plan or on specific notice (a second order that follows failed QDRO).

AARP recommends that the example be changed, or a separate example be added, to state that the plan received general notification upon divorce that benefits would be part of a settlement. This change would more accurately reflect the intent of Congress and clarify that the form of notice was not key to QDRO status. As long as the plan receives written notice that the participant's benefits may be subject to a domestic relations order, the fact that the participant dies before the issuance of a final correct QDRO would be immaterial. The non-participant spouse should be able to receive a distribution after the domestic relations order becomes qualified.

AARP appreciates the opportunity to comment on the Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders. If you have any questions or need further assistance, please do not hesitate to contact Amy Shannon at 202/434-3768.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel and
Director of Legislative Policy
Government Relations and Advocacy