

QDRO AFTER DEATH OF PARTICIPANT

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The Employee Benefits Security Administration (f.k.a. Department of Labor), has issued a final ruling regarding the interim ruling published on March 7, 2007 in regard to a statutory directive contained in section 1001 of the Pension Protection Act of 2006. Public Law No.109-280 (PPA), requiring the Secretary of Labor to issue regulations clarifying certain issues relating to the timing and order of domestic relations orders under section 206(d) of ERISA.

The rule provides guidance to plan administrators, service providers, participant's and alternate payees on qualified domestic relations order (QDRO) requirements under ERISA. The rule became effective on August 9, 2010.

Three specific examples are cited in the regulation:

- 1) The regulation provides that a domestic relations order otherwise meeting all of ERISA's requirements to be deemed a QDRO shall not fail to be treated as a QDRO solely because the order is issued after the death of the participant, or revises another domestic relations order or QDRO.
- 2) The regulation provides that a domestic relations order will not fail to be a QDRO solely because it is issued after the parties divorce.
- 3) The regulation provides that an order would not fail to be a QDRO solely because it is issued after the participant's annuity starting date.

Consistent with the view of Congress, the rule clarifies first, that the sequence in which multiple orders may be issued does not, in itself, determine whether an order is or is not a QDRO. Secondly, the time at which an order is issued does not, in itself, determine whether an order is a QDRO.

Often our office is asked whether or not multiple QDRO's can be served on the same plan regardless if it's the same case or not. We often get questions regarding cases that are sometimes 10-15 years old and whether or not it's too late to draft a QDRO. In addition we have fielded questions as to whether or not a QDRO could be drafted 10-15 years after divorce even if the participant has remarried and subsequently divorced and a second QDRO was drafted for the second divorce but failed to get drafted on the first divorce. Based upon the final ruling the clear answer to these questions is yes. Unless the funds had been distributed, the time it takes to draft and submit a QDRO is no longer of issue however all other terms and conditions of ERISA section 206(d) requirements must still be met.