Pension Analyst

Compliance Bulletin

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DOL clarifies QDRO timing and order rules

On June 10, 2010, the Department of Labor (DOL) published final rules for Qualified Domestic Relations Orders (QDROs), which take effect on August 9, 2010. The Pension Protection Act of 2006 (PPA) directed the DOL to publish these rules addressing and clarifying issues relating to the timing of and order in which domestic relations orders (DROs) are issued. The final rules simply clarify the interim rules published by the DOL on March 7, 2007, but do not make significant changes to those rules.

Timing issues

The final rules confirm that a DRO is still eligible to be a QDRO if it is issued:

- After the participant's death;
- After the parties' divorce; or
- After the participant's annuity starting date.

The examples illustrating these rules make the following important points:

- If a DRO is issued while a participant is alive but the plan administrator rejects it and a corrected DRO is then submitted after the participant's death, the second DRO is still eligible to be a QDRO.

- If a participant dies before *any* DRO has been submitted to the plan administrator, a DRO submitted after the participant's death is also eligible to be a QDRO.

- If a DRO is issued after a participant retires and begins receiving benefits, the DRO is eligible to be a QDRO even if it requires a change in the form of payment being made. However, the rules do recognize two different paths that may be taken and outcomes that may result in this type of situation.

    - In the first situation, the participant retires with a single life annuity paying $1,000 per month. The participant and spouse are then divorced and the resulting DRO directs the plan to pay 50% of the participant's monthly benefit ($500) to the former spouse for the remainder of the participant's life. Since these provisions do not change the overall payment amount or length of time that payments will be made, a plan should have no difficulty complying with the DRO.

    - In the second situation, the participant retires with a single life annuity paying $1,000 per month, and is later divorced. The resulting DRO directs the plan to pay 50% of the participant's monthly benefit ($500) to the former spouse for the remainder of the *former spouse's* life. To accommodate this design, the plan would have to permit reannuitization, resulting in a new annuity starting date. In fact, most plans *do not allow* reannuitization, or a change in the elected form of payment, following a participant's annuity starting date. If the plan does not permit such changes, the DRO could not be qualified. The plan could be amended to allow reannuitization, but that would open it up to possible anti-selection and could increase costs significantly. A defined benefit plan sponsor would not want to make such an amendment without first consulting the plan's enrolled actuary for a cost-benefit analysis.

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Ordering issues

The final rules also confirm that a DRO may be a QDRO even if it is issued after or revises another DRO. This concept is illustrated by two examples:

- Where a second DRO involving the same parties (participant and alternate payee) is issued, changing the benefits awarded in the initial DRO; and
- Where a second DRO is issued involving the same participant and a different alternate payee.

In the second example, a participant and “Spouse 1” divorce and the 401(k) plan receives a DRO awarding 50% of the participant’s account balance to Spouse 1. The plan administrator qualifies this DRO. The participant then marries “Spouse 2” and they are later divorced. The plan administrator then receives a second DRO awarding 50% of the account *balance that remains in the participant’s name* to Spouse 2. Assuming it meets all other QDRO requirements, this DRO would also be a QDRO. However, if the second DRO awarded 50% of the participant’s *entire account balance* to Spouse 2, it could not be qualified because a portion of that balance has already been assigned to Spouse 1 under the earlier QDRO.

Impact on plan documentation and administration

In most cases, plan sponsors should not have to adopt plan amendments to reflect these clarifying rules since most plan documents simply contain cross-references to the Code section 414(p) QDRO rules. However, plan sponsors may want to review their QDRO administrative procedures to ensure that they do not contradict these new rules. Plan sponsors that use Prudential’s QDRO Outsourcing Service do not have to take any action as this service already reflects the PPA rules and is not affected by this clarifying guidance.

Additional guidance forthcoming

The DOL also indicates that it will be updating its educational handbook "QDROs -- The Division of Pensions Through Qualified Domestic Relations Orders," which is available on its website. However, no specific timetable is provided for making those updates.

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