

*Pension*  
ANALYST

# Compliance Bulletin

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## DOL Provides Guidance on Clarification of QDRO Rules

Effective August 17, 2006, the Pension Protection Act of 2006 (PPA) clarified that a domestic relations order may be considered a qualified domestic relations order (QDRO), even if it:

- Is issued after another domestic relations order or QDRO;
- Revises another domestic relations order or QDRO; or
- Is issued following the death of the participant or at another unusual time.

PPA requires the Department of Labor (DOL) to issue regulations regarding these clarifications to the QDRO rules by August 17, 2007. On March 7, 2007, the DOL issued interim guidance regarding the situations described in PPA and requested public comments on those rules. The interim rules are effective April 6, 2007, and comments must be received by the DOL by May 7, 2007.

The DOL guidance provides examples illustrating situations where the timing of the issuance of a domestic relations order or the fact that it revises an earlier order will not adversely affect its ability to be considered a QDRO. The guidance also clarifies that such orders are still subject to [the standard QDRO rules](#). Plan sponsors should familiarize themselves with this guidance in case they are faced with any of these situations when reviewing domestic relations orders.

### Subsequent Domestic Relations Orders

The interim rules provide the following examples illustrating that the existence of one QDRO does not prevent the qualification of a later domestic relations order relating to the same participant's account or benefit.

**Orders between the same parties.** Participant "John" and spouse "Susan" get divorced, and the administrator of John's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of John's benefits to Susan as the alternate payee. Before benefit payments begin, John and Susan receive a second domestic relations order. The second order reduces the portion of John's benefits that Susan was to receive under the QDRO. If the second order meets the basic QDRO requirements, it will be a QDRO, even though it reduces the assignment of benefits provided by the first QDRO.

**Orders between different parties.** Participant "Jack" and spouse "Lisa" get divorced, and the administrator of Jack's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Jack's benefits to Lisa as the alternate payee. Jack then marries Mary, and they also get divorced. Jack's 401(k) plan administrator receives a domestic relations order pertaining to Mary. The order assigns to Mary a portion of Jack's 401(k) benefits not already allocated to Lisa.

If the second order meets the basic QDRO requirements, it will be a QDRO, even though another QDRO already exists.

### Timing of Domestic Relations Orders

In this guidance, the DOL also provides examples illustrating that domestic relations orders issued after the participant's death, divorce or annuity starting date would still be QDROs, if they meet the standard qualification requirements.

**Issued After Death.** Participant "Bill" and spouse "Jane" get divorced, and the administrator of Bill's plan receives a domestic relations order. The administrator determines that the order is deficient and is not a QDRO. Shortly thereafter, Bill dies while actively employed. A second domestic relations order correcting the defects in the first order is then submitted to the plan. If the second order meets the QDRO requirements, it will be a QDRO, even though it was issued after Bill's death.

**Issued After Divorce.** Participant "Tom" and spouse "Kate" get divorced. As a result, Kate no longer meets the definition of "surviving spouse" under the terms of the plan. Subsequently, the plan administrator receives a domestic relations order requiring that Kate be treated as Tom's surviving spouse for purposes of receiving a plan-provided death benefit payable only to a participant's surviving spouse. As long as the order meets the QDRO requirements, it will be a QDRO, even though Kate did not meet the definition of a "surviving spouse" under the terms of the plan at the time it was issued.

**Issued After Annuity Starting Date.** Participant "Joe" retires and, with spouse "Rita's" consent, begins receiving a straight life annuity form of payment. Joe and Rita then get divorced and present the plan with a domestic relations order providing for Rita, as alternate payee, to receive half of the benefit payments that are made to Joe after a specified future date. As long as the order meets the QDRO requirements, it will be a QDRO, even though it was issued after Joe's annuity starting date.

### Standard QDRO Rules Apply

The interim rules also clarify that standard QDRO requirements and protections apply to subsequent domestic relations orders and regardless of the timing of the order. For example, an order issued after a participant's death cannot require a plan to provide a type or form of benefit, or any option, which is not otherwise provided under the plan. Similarly, a second domestic relations order cannot assign all or any portion of a benefit that has already been assigned to another alternate payee. In addition, a second domestic relations order issued between the same parties must be separately accounted for while the plan administrator is determining whether it is qualified.

### Additional Guidance Needed

While this interim guidance is helpful, it also raises some questions. For example, is there any significance in the fact that the DOL's example of a domestic relations order issued following a participant's death specifies that the participant dies "while actively employed?" Would the analysis and outcome be any different if the participant died after terminating employment with the plan sponsor? Hopefully, final regulations will address these issues and concerns. In the meantime, plan administrators may find the interim guidance to be helpful in dealing with some of their more unusual domestic relations order situations.

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