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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2530

RIN 1210-AB15

Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule issued under section 1001 of the Pension Protection Act of 2006, Public Law 109-280 (PPA), which requires the Secretary of Labor to issue, not later than 1 year after the date of the enactment of the PPA, regulations clarifying certain issues relating to the timing and order of domestic relations orders under section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The rule contained in this document provides guidance to plan administrators, service providers, participants, and alternate payees on the qualified domestic relations order (QDRO) requirements under ERISA. The rule is being adopted in response to the specific statutory directive contained in the PPA. Interested persons are invited to submit comments on the interim final rule for consideration by the Department of Labor in developing a final rule.

DATES: Effective date: The interim final rule is effective on April 6, 2007.

Comment date: Written comments on the interim final rule must be received by May 7, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to e-ORI@dol.gov, or by using the Federal eRulemaking portal <http://www.regulations.gov> (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N- 5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: QDRO Regulation. All comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Yolanda R. Wartenberg, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693-8510. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Qualified Domestic Relations Order Provisions

Section 206(d)(3) of title I of ERISA, and the related provisions of section 414(p) of the Internal Revenue Code of 1986 (Code), establish a limited exception to the prohibitions against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13). Under this limited exception, a participant's benefits under a pension plan may be assigned to an alternate payee, defined as the participant's spouse, former spouse, child, or other dependent, pursuant to an order that constitutes a qualified domestic relations order (QDRO) within the meaning of those provisions. Such QDROs, in addition, survive the federal preemption of State law imposed by ERISA section 514(a) by virtue of ERISA section 514(b)(7).

Pursuant to the QDRO provisions, a plan administrator must determine, in accordance with specified procedures, whether an order purporting to divide a participant's benefits under a plan meets the applicable requirements set forth in section 206(d)(3) of ERISA. If the plan administrator determines that the order meets these requirements and is, accordingly, a QDRO within the meaning of section 206(d)(3), the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee or payees named in the order in accordance with the terms of the order.

Subparagraphs (G) and (H) of ERISA section 206(d)(3) set forth provisions relating to the procedures that a plan must establish, and a plan administrator must observe, in determining whether an order is a QDRO and in administering the plan and the participant's benefits during the period in which the plan administrator is making such a determination. The plan's procedures 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.

Subparagraph (H) of section 206(d)(3) provides specific procedural protection of a potential alternate payee's interest in a participant's benefits during the plan's determination process and for a period of up to 18 months (the 18-month period) during which the issue of the qualified status of a domestic relations order is being determined—whether by the plan administrator, by a court of competent jurisdiction, or otherwise. During the 18-month period, a plan administrator must separately account for any amounts that would have been payable to the alternate payee if the order had been immediately treated as a QDRO and must pay these amounts (including any interest thereon) to the alternate payee if the order is deemed qualified within such period. If the issue as to whether the order is a QDRO is not resolved within the 18-month period, the plan administrator is to pay such amounts to the person or persons who

would have been entitled to the amounts if there had been no order. Any determination that an order is a QDRO that is made after the close of the 18-month period is to be applied prospectively only.

If a plan fiduciary, acting in accordance with the fiduciary responsibility provisions of part 4 of title I of ERISA, treats an order as a QDRO (or determines that such an order is not a QDRO) and distributes benefits in accordance with that determination, paragraph (I) of section 206(d)(3) provides that the obligations of the plan and its fiduciaries to the affected participants and alternate payees with respect to the distribution shall be treated as discharged.

The QDRO provisions detail specific requirements that an order must satisfy in order to constitute a QDRO. The order must be a "domestic relations order" issued pursuant to a State domestic relations law (including a community property 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. Section 206(d)(3)(B)(ii). 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 a plan. Section 206(d)(3)(B)(i). Further, it must clearly specify the name and last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the participant's benefits to be paid by the plan(s) 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. Section 206(d)(3)(C). An order will fail to be a QDRO, however, 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 QDRO. Section 206(d)(3)(D).

B. Pension Protection Act of 2006

Under section 1001 of the Pension Protection Act of 2006 (PPA), Public Law 109-280, section 1001, 120 Stat. 780 (2006), Congress instructed the Secretary of Labor to issue regulations, not later than 1 year after the date of the enactment, under section 206(d)(3) of ERISA and section 414(p) of the Code, to clarify that - (1) a domestic relations order otherwise meeting the requirements to be a QDRO, including the requirements of section 206(d)(3)(D) of ERISA and section 414(p)(3) of the Code, shall not fail to be treated as a QDRO solely because- (A) the order is issued after, or revises, another domestic relations order or QDRO; or (B) of the time at which it is issued. Section 1001 of the PPA also requires that the regulations clarify that such orders are subject to all of the same requirements and protections that apply to QDROs, including the provisions of section 206(d)(3)(H) of ERISA and section 414(p)(7) of the Code.

C. Overview of Interim Final Rule

Scope of the Regulation

Paragraph (a) of the regulation provides that the scope of the regulation is to implement the directive contained in section 1001 of the PPA to clarify certain timing issues with respect to domestic

relations orders and qualified domestic relations orders under ERISA.

Subsequent Domestic Relations Orders

Paragraph (b)(1) of the regulation provides that a domestic relations order otherwise meeting ERISA's requirements to be a QDRO shall not fail to be treated as a QDRO solely because the order is issued after, or revises, another domestic relations order or QDRO.

Paragraph (b)(2) provides examples of this rule.² Example 1 illustrates this rule as applied to a subsequent order revising an earlier QDRO involving the same parties. Example 2 illustrates this rule in the context of a subsequent order involving the same participant and a different alternate payee.

Timing of Domestic Relations Order

Paragraph (c)(1) of the regulation provides that a domestic relations order otherwise meeting ERISA's requirements to be a QDRO shall not fail to be treated as a QDRO solely because of the time at which it is issued. Paragraph (c)(2) provides examples of this rule. Example 1 illustrates the principle that a domestic relation order will not fail to be a QDRO solely because it is issued after the death of the participant. Example 2 illustrates that a domestic relation order will not fail to be a QDRO solely because it is issued after the parties divorce. Example 3 illustrates that an order would not fail to be a QDRO solely because it is issued after the participant's annuity starting date.

Requirements and Protections

Paragraph (d)(1) of the regulation provides that any domestic relations order described in paragraph (b) or (c) of the regulation shall be subject to the same requirements and protections that apply to all QDROs under section 206(d)(3) of ERISA. Paragraph (d)(2) provides examples of this rule. Example 1 illustrates that, although an order will not fail to be a QDRO solely because it is issued after the death of the participant, the order would fail to be a QDRO if it requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan. Example 2 illustrates application of the protective rules regarding segregation of payable benefits to a second order involving the same participant and alternate payee. Example 3 illustrates that, although an order will not fail to be a QDRO solely because it is issued after another QDRO, the order would fail to be a QDRO if it assigns benefits already assigned to another alternate payee under another QDRO.

D. Effective Date

The interim final regulation will be effective 30 days after the date of publication in the Federal Register. The guidance provided by the interim final regulation is in response to the direction from Congress in section 1001 of the PPA to the Secretary of Labor to issue regulations to clarify current law under section 206(d)(3) of ERISA. The Department, therefore, has determined it is necessary and appropriate to proceed with an interim final rule to provide the clarification mandated by Congress, while also requesting public comments on the matter for the purpose of drafting a final rule.

E. Justification for Interim Final Rulemaking

This regulation incorporates, with minor changes, language in section 1001 of the Pension Protection Act. The changes do not modify the meaning of the statutory language. In the Department's view, Congress directed the Secretary to adopt the substance of this language as a clarification of current law. In issuing these regulations, the Secretary has not deviated from the narrow Congressional directive. The examples included in the regulation merely provide interpretive guidance by explaining how the statutory language would apply to particular facts. Therefore, in accordance with section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), the Department finds for good cause that notice and public procedure on this regulation is unnecessary. To the extent that the examples go beyond the statutory language, they are purely interpretive and are not subject to the notice and public procedure requirements of section 553(b).

F. Request for Comments

The Department invites comments from interested persons on all aspects of the interim final rule, including whether, and to what extent, there are additional factual scenarios that should be added to the examples already in the interim final rule. To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically by e-mail to e-ORI@dol.gov, or by using the Federal eRulemaking portal at <http://www.regulations.gov> (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N- 5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: QDRO Regulation. All comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC, 20210.

G. Regulatory Impact Analysis

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that this regulatory action is not economically significant within the meaning of section 3(f)(1) the Executive Order. However, the Office of Management and Budget (OMB) has

determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of its potential costs and benefits.

This interim final rule is intended to clarify the statutory requirements for QDROs under section 206(d)(3) of ERISA and section 414(p) of the Code. The provisions of section 206(d)(3) generally assist State authorities in deciding permissible ways in which pension benefits may be divided in domestic relations matters. The rules and processes under section 206(d)(3) make it possible for plan administrators to determine whether a State order seeking to assign pension benefits to an alternate payee should be given effect under the plan; clear rules concerning what constitutes a QDRO have the effect of assisting plan administrators in reviewing orders received by the plan, as well as participants and alternate payees in planning how to take pension assets into account when significant events require making a division of marital assets.

In directing the Department, in section 1001 of the Pension Protection Act, to clarify the application of the QDRO provisions, Congress expressed the view that existing uncertainty about the application of those provisions has caused difficulties meriting resolution through regulatory action. Uncertainty concerning the application of the QDRO provisions can impose litigation and other costs on plans, participants, and alternate payees, as well as on State domestic relations authorities, that will be reduced through the promulgation of this rule. Consistent with the view of Congress, the rule clarifies, first, that the sequence in which multiple orders may be issued does not in itself affect whether the orders are QDROs, and, second, that the time at which an order is issued does not, in itself, determine whether an order is or is not a QDRO. The rule further reiterates that an order must meet the specific requirements of sections 206(d)(3) of ERISA and section 414(p) of the Code.

By reducing uncertainty over the application of the statutory requirements in specific circumstances, the rule is expected to reduce costs that might otherwise arise from the necessity of resolving uncertainty in such circumstances. By providing clearer rules for plan administrators, the rule is also expected to increase the efficiency of plan administration. In addition, the Department is issuing this rule in direct response to a Congressional directive. As described above, section 1001 of the Pension Protection Act requires the Department to issue regulations clarifying that an order otherwise meeting the requirements of section 206(d)(3) of ERISA for a QDRO should not fail to be treated as a QDRO solely because it was issued after or revised another order, or because of the time at which it was issued. In issuing this interim final rule, therefore, the Department is fulfilling objectives expressly endorsed by Congress. Because the rule applies only in certain specific circumstances and affects only a small subset of domestic relations orders, the Department believes that its economic impact will be small, overall, but positive.

The rule is not anticipated to impose increased compliance costs, since it merely establishes the legal effect of certain sequences of events. Although it may cause some orders to be treated as QDROs that otherwise might be disputed (or fail to be treated as a QDRO), the rule provides certainty with respect to the circumstances it covers, which will aid State authorities seeking to divide pension benefits

and assist plan administrators seeking to discharge their obligations under section 206(d)(3) of ERISA, without limiting the power of State authorities to determine the proper division of marital assets. The rule is expected generally to provide benefits to pension plans, plan participants and alternate payees, and State domestic relations authorities by increasing the clarity of the rules that apply to QDROs.

Based on the foregoing assessment, the Department concludes that promulgation of this interim final rule will provide substantial benefits without imposing major costs.

Paperwork Reduction Act

The interim final regulation being issued here is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) because it does not contain an "information collection" as defined in 44 U.S.C.3502 (11).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rule-making describing the impact of the rule on small entities and seeking public comment on such impact. Because this rule is being issued as an interim final rule, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Nevertheless, the Department has considered the likely impact of the interim rule on small entities in connection with its assessment under Executive Order 12866, described above, and believes this rule will not have a significant impact on a substantial number of small entities. For purposes of this discussion, the Department deemed a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. The Department invites comments on the effect of the interim final rule on small entities.

Congressional Review Act

The interim final rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and will be transmitted to Congress and the Comptroller General for review. The interim final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it does not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the interim final rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or impose an annual burden exceeding \$100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires federal agencies to adhere to specific criteria in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. One exception described in section 514(b)(7) is for qualified domestic relations orders, as defined in section 206(d)(3) of ERISA. The interim rule does not alter the provisions of the statute, but merely clarifies the status of certain types of domestic relations orders under ERISA.

List of Subjects in 29 CFR Part 2530

Alternate payee, Divorce, Domestic relations orders, Employee benefit plans, Marital property, Pensions, Plan administrator, Qualified domestic relations orders, Spouse.

For the reasons set forth in the preamble, the Department amends Subchapter D, Part 2530 of Title 29 of the Code of Federal Regulations as follows:

Subchapter D-Minimum Standards for Employee Pension Benefit Plans Under the Employee Retirement Income Security Act of 1974

PART 2530-RULES AND REGULATIONS FOR MINIMUM STANDARDS FOR EMPLOYEE PENSION BENEFIT PLANS

1. The authority citation for part 2530 is revised to read as follows:

Authority: Secs. 201, 202, 203, 204, 210, 505, 1011, 1012, 1014, and 1015, Pub. L. 93-406, 88 Stat. 852-862, 866-867, 894, 898-913, 924-929 (29 U.S.C. 1051-4, 1060, 1135, 26 U.S.C. 410, 411, 413, 414); Secretary of Labor's Order No. 13-76. Section 2530.206 also issued under sec. 1001, Pub. L. 109-280, 120 Stat. 780.

2. Add § 2530.206 to read as follows:

§ 2530.206 Time and order of issuance of domestic relations orders.

(a) Scope. This section implements section 1001 of the Pension Protection Act of 2006 by clarifying certain timing issues with respect to domestic relations orders and qualified domestic relations orders under the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1001 et seq.

(b) Subsequent domestic relations orders. (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order.

(2) The rule described in paragraph (b)(1) of this section is illustrated by the following examples:

Example (1). Subsequent domestic relations order between the same parties. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse as the alternate payee. Subsequently, before benefit payments have commenced, Participant and Spouse seek and receive a second domestic relations order. The second order reduces the portion of Participant's benefits that Spouse was to receive under the QDRO. The second order does not fail to be treated as a QDRO solely because the second order is issued after, and reduces the prior assignment contained in, the first order.

Example (2). Subsequent domestic relations order between different parties. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits not already allocated to Spouse 1. The second order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO.

(c) Timing. (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because of the time at which it is issued.

(2) The rule described in paragraph (c)(1) of this section is illustrated by the following examples:

Example (1). Orders issued after death. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order, but the administrator finds the order deficient and determines that it is not a QDRO. Shortly thereafter, Participant dies while actively employed. A second domestic relations order correcting the defects in the first order is subsequently submitted to the plan. The second order does not fail to be treated as a QDRO solely because it is issued after the death of the Participant.

Example (2). Orders issued after divorce. Participant and Spouse divorce. As a result, Spouse 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 Spouse be treated as the Participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan only to a participant's surviving spouse. The order does not fail to be treated as a QDRO solely because, at the time it is issued, Spouse no longer meets the definition of a "surviving spouse" under the terms of the plan.

Example (3). Orders issued after annuity starting date. Participant retires and commences benefit payments in the form of a straight life annuity, with respect to which Spouse waives the surviving spousal rights provided under the plan and section 205 of ERISA. Participant and Spouse divorce after Participant's annuity starting date and present the plan with a domestic relations order providing for Spouse, as alternate payee, to receive half of the benefit payments that are made to Participant after a specified future date. Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date.

(d) Requirements and protections. (1) Any domestic relations order described in this section shall be subject to the same requirements and protections that apply to qualified domestic relations orders under section 206(d)(3) of ERISA.

(2) The rule described in paragraph (d)(1) of this section is illustrated by the following examples:

Example (1). Type or form of benefit. Participant and Spouse divorce, and their divorce decree provides that the parties will prepare a domestic relations order assigning 50 percent of Participant's benefits under a 401(k) plan to Spouse to be paid in monthly installments over a ten-year period. Shortly thereafter, Participant dies while actively employed. A domestic relations order consistent with the decree is subsequently submitted to the 401(k) plan; however, the plan does not provide for ten-year installment payments of the type described in the order. Pursuant to paragraph (c)(1) of this section, the order does not fail to be treated as a QDRO solely because it is issued after the death of Participant, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

Example (2). Segregation of payable benefits. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order under which Spouse would begin to receive benefits immediately if the order is determined to be a QDRO. The plan administrator separately accounts for the amounts covered by the domestic relations order as is required under section 206(d)(3)(H)(v) of ERISA. The plan administrator finds the order deficient and determines that it is not a QDRO. Subsequently, after the expiration of the segregation period pertaining to that order, the plan administrator receives a second domestic relations order relating to the same parties under which Spouse would begin to receive benefits immediately if the second order is determined to be a QDRO. Notwithstanding the expiration of the first segregation period, the

amounts covered by the second order must be separately accounted for by the plan administrator for an 18-month period, in accordance with section 206(d)(3)(H) of ERISA and paragraph (d)(1) of this section.

Example (3). Previously assigned benefits. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO assigns a portion of Participant's benefits to Spouse as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits already assigned to Spouse 1. The second order does not fail to be treated as a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO. The second order, however, would fail to be a QDRO under section 206(d)(3)(D)(iii) and paragraph (d)(1) of this section because it assigns all or a portion of Participant's benefits that are already assigned to Spouse 1 by the prior QDRO.

Signed at Washington, DC, this 28th day of February, 2007.

Bradford P. Campbell,

Acting Assistant Secretary,

Employee Benefits Security Administration,

Department of Labor.

1 The QDRO provisions were added to ERISA and the Code by the Retirement Equity Act of 1984 (REA), Public Law 96-397, 96 Stat. 1438 (1984). Except where no corresponding provision exists, all references to paragraphs of ERISA section 206(d)(3) should be read to refer to corresponding provisions of Code section 414(p). The Secretary of Labor has authority to interpret the QDRO provisions, section 206(d)(3), and its parallel provision at section 414(p) of the Code, and to issue QDRO regulations in consultation with the Secretary of the Treasury. 29 USC 1056(d)(3)(N). The Secretary of the Treasury has authority to issue rules and regulations necessary to coordinate the requirements of section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter I of Subtitle A of the Code. 26 U.S.C. 401(n). The Secretary of the Treasury has been consulted on this interim final rule.

2 The examples in paragraphs (b)(2), (c)(2) and (d)(2) of the regulation show how the rules in paragraphs (b)(1), (c)(1) and (d)(1), respectively, apply to specific facts. They do not represent the only circumstances for which these rules would provide clarification.

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