

## One Minute Memo™



# New Labor Department Rules Allow QDROs Issued After Participant's Death

The Department of Labor has issued new regulations, effective April 6, 2007, which clarify certain issues relating to domestic relations orders under ERISA. In particular, the new regulations allow a valid QDRO to be issued even after the participant has died. Plan administrators will need to change their QDRO procedures to the extent they are inconsistent with the new regulations.

The new regulations address two specific issues:

**Subsequent QDROs:** A domestic relations order (DRO) may be treated as a QDRO even when the order is issued after or revises another DRO or QDRO. For example, if a plan administrator qualifies a DRO, then later receives a second order in the same divorce proceedings, the second order may still be a QDRO even if it reduces the benefits awarded to the alternate payee under the initial QDRO. If a subsequent DRO is submitted on behalf of a participant's second former spouse, it may be treated as a QDRO even when it assigns to the participant's second former spouse a portion of the participant's benefits not already assigned to his or her first former spouse.

**Timing:** The regulations further provide that a DRO does not fail to be a QDRO solely because of when it is issued. Specifically, the guidance clarifies that post-death domestic relations orders will not fail to be treated as QDROs simply because the participant has died before a final DRO was issued. In addition, the new regulations provide that a QDRO may be qualified (and may award survivorship benefits to a former spouse) even if issued after the parties are already divorced, and may divide future benefit payments even if issued after the payments have begun.

Plan administrators should continue to carefully review domestic relations orders to ensure that all of the protections and requirements afforded under ERISA and the Internal Revenue Code are otherwise met. For example, an order still fails to be qualified if it requires the plan to provide any type or form of benefit or any option not otherwise provided under the plan, or if the order assigns any portion of a participant's benefits that are already assigned to a former spouse under a previous QDRO.

*If you have any questions about the new QDRO regulations, please contact your Seyfarth Shaw attorney, or any of the attorneys in the Employee Benefits & Executive Compensation Department at [www.seyfarth.com](http://www.seyfarth.com).*

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