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Re: Labor Department Issues New Regulations for Qualified Domestic Relations Orders (QDROs)

Dear Clients and Other Friends:

The Department of Labor recently issued new regulations that clarify procedures regarding sequential domestic relations orders and domestic relations orders issued after a participant's death, divorce, or benefit commencement date. Because of these new regulations, plan administrators may want to review existing procedures for determining whether domestic relations orders meet ERISA requirements for qualified domestic relations orders (QDROs).

The new regulations provide guidance to plan administrators, service providers, participants and alternate payees on requirements for QDROs under ERISA. The regulations are issued in response to a specific statutory directive contained in the Pension Protection Act of 2006.

Under the regulations, a domestic relations order will not fail to be a QDRO "solely because the order is issued after, or revises, another QDRO." For example, if a domestic relations order allocating benefits between a participant and a spouse (as alternate payee) has been found to be a QDRO, a subsequent order between the same parties will not fail to be a QDRO simply because it changes the amount allocated to the alternate payee. In addition, a second domestic relations order may be found to be a QDRO even if it does not involve the same parties. For example, order number one may allocate benefits between a participant and spouse #1; order number two may assign a portion of participant's remaining benefits (not allocated to spouse #1) to spouse #2. Again, the domestic relations order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that the earlier order is a QDRO.

The regulations also provide that a domestic relations order will not fail to be a QDRO "solely because of the time at which it is issued." Accordingly, a domestic relations order should not be rejected as a QDRO merely because it is issued after the participant's death, the parties'

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divorce, or the participant's annuity starting date.¹ As is always the case under provisions of ERISA Section 206(d)(3), the regulations reiterate that a domestic relations order cannot require a plan to provide a type or form of benefit not otherwise provided under the plan or to pay benefits previously assigned to another alternate payee by a prior QDRO.

These regulations became effective April 6, 2007, but the Department of Labor has invited interested persons to submit additional comments for consideration on or before May 7, 2007.

These new regulations are a clarification of existing ERISA procedures for QDROs, and not a change.² While we believe that most of the procedures clarified by the regulations are generally being observed by our clients, existing plan procedures for QDROs should be reviewed and may require some changes. We invite your inquires.

Very truly yours,

Jule M. Hannaford IV

JHM/ram/jks

¹ It is not clear what the plan will do if a participant dies, the 401(k) balance is paid or assigned to a current spouse, and a former spouse subsequently files a domestic relations order. An example in the regulations makes it clear that an order proposed prior to the participant's death can be finalized after death occurs, but the regulations do not address situations where the plan does not become aware of the former spouse's claim until after the participant has died and benefits have been paid (or assigned) to a current spouse. These cases will be resolved on a case by case basis.

² Paragraph (a) states that the regulation "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 [ERISA]."