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Sent: Wednesday, August 15, 2007 4:25 PM
To: EBSA, E-ORI - EBSA
Cc: 'Mark Tomkins'; 'Jacqueline Alworth'
Subject: Guidance Related to QDRO Regulations and Interpretations

Attention: Yolanda R. Wartenberg:

It has been noted that across the board the comments received by the DOL in response to IRS Notice 2007-7 favor more specificity and guidance for the preparation of QDROs. Attached is the current version (recently revised to include new DOL interim final regulations for IRS Notice 2007-7) of a document containing suggestions and instructions that we offer to our clients (plan sponsors) to make available to participants and their advisors for the preparation of QDROs.

We send you this document in case it might be of use to the DOL in providing guidance, perhaps in the form of "best practices" for those needing assistance in the preparation of QDROs.

Please feel free to contact us if you have any questions or would like to discuss this. Also, feel free to edit, use and/or distribute this document in any way that you deem helpful.

Regards,

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Name of Plan
QDRO Suggestions/Instructions

A. Requirements for a QDRO, with sample language (the information provided, using whatever language or format desired, must be substantially correct):

The Participant is [name]. The Participant's address is [last known mailing address]. (The Participant's social security number is [SSN].) The Participant's date of birth is [DOB].

The Alternate Payee is [name]. The Alternate Payee's address is [last known mailing address]. (The Alternate Payee's social security number is [SSN].) The Alternate Payee's date of birth is [DOB]. The Alternate Payee is the [spouse/former spouse/child/other dependent] of the Participant.

The order applies to benefits under the **Name of Plan.**

Note: Social Security Numbers must be provided to the Plan for tax purposes. This can be done in the QDRO or, for confidentiality purposes, ***it is recommended that it be provided in a separate document that is not filed in court.***

B. Other requirements (some sections without sample language):

Vested Benefit: The QDRO must clearly specify the dollar amount *or* percentage of benefits assigned to the Alternate Payee. It is recommended that the QDRO specify that only ***vested*** asset balances be split.

Date of Segregation of Assets: There should be a specified effective date for segregating the assets and determining vesting. Does the awarded amount for the Alternate Payee share in investment income (gain/loss) from that date?

Segregation of Assets: Language to include "At such time as this Domestic Relations Order has been filed with a court and approved by

the Plan Administrator, the Alternate Payee's awarded portion shall be placed in a principal-protecting investment (most conservative fund available in the Plan and the one designated as the default fund the plan has chosen to place investments for participants who have not elected specific fund options for their account) under the Plan until such time as a distribution is made to the Alternate Payee (including rollover to an IRA) or otherwise directed by the Alternate Payee."

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Payment Options: Language to include "Benefits will be payable to the Alternate Payee in any form or permissible option otherwise available to participants under the terms of the Plan, including, but not limited to, a single lump-sum cash payment." The **Name of Plan** does not permit life annuities, joint and survivor annuities or any other kind of annuity.

Death of Participant: Language to include "In the event that the Participant dies prior to the establishment of the separate account(s) in the name of the Alternate Payee, the Alternate Payee shall receive the benefits payable under the Plan, including death benefits, if any, to the extent of the full amount of his/her benefits, but only to the extent of the benefits, as called for under Section () of this Order. Should the Participant predecease the Alternate Payee after the new account(s) have been established on his/her behalf, such Participant's death shall not affect the Alternate Payee's right to receive his/her assigned portion of the benefits as set forth herein. Further, the Participant's account balance, which remains the property of the Participant, will be payable to the Participant's designated beneficiary(ies) or in accordance with Plan provisions."

Death of Alternate Payee: It is recommended that language be included related to the distribution of the amount payable to the Alternate Payee as called for in the QDRO in the event that the Alternate Payee dies prior to distribution of the award to the Alternate Payee.

Loans: If the Participant has a Plan loan, how does the loan balance affect the award calculation? It is recommended to allocate 100% of the loan "asset" to the Participant and adjust, as desired, the account balance, assets, and calculation of the award to the Alternate Payee.

The Alternate payee shall not be entitled to take any loans from the plan.

Timing of Distributions: The time when an Alternate Payee gets a distribution of assets should be addressed. The **Name of Plan** allows immediate distributions to Alternate Payees if called for in the QDRO.

Completion of Plan Distribution Paperwork: It is helpful to acknowledge that the Alternate Payee must complete the usual Plan distribution paperwork in order to receive a distribution from the Plan.

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Court Jurisdiction: Court jurisdiction should be limited to the vested assets of the Participant, not the entire Plan. Continuing jurisdiction should be limited to modifying the document as necessary to keep it Qualified.

That the order issued is a judgment, decree or order issued pursuant to a State's domestic relations law (including community property law) with the authority to issue such judgments, decrees or orders should be stated.

That the order issued relates to the provision of marital property rights, child support or alimony payments to a former spouse, child or other dependent of a participant should be stated.

C. **Language often found in QDROs reciting items that are NOT allowed:**

This order does not require the Plan or Plan Administrator:

To provide any type or form of benefit option not otherwise available under the terms of the Plan.

To provide for increased benefits, determined on the basis of actuarial value.

To pay benefits to an alternate payee that are required to be paid to another alternate payee under a previous QDRO.

To pay any amount greater than an amount to which the participant would otherwise be entitled at the time of segregation.

To make any payment or take any action which is inconsistent with any federal or state law, rule, regulation or applicable judicial decision.

D. **IRS Notice 97-11 states that QDROs should avoid assigning tax liability:**

"The Federal income tax treatment of retirement benefits is governed by Federal law, and a QDRO cannot designate who will be liable for the taxes owed when retirement benefits are paid."

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E. **IRS Notice 2007-7 DOL interim final regulations state that if a DRO otherwise meets the requirements to be deemed a QDRO it will not fail to be treated as a QDRO solely because:**

it is issued after another domestic relations order or QDRO;

it revises another domestic relations order or QDRO; or

it is issued at an unusual time (such as following the death of the participant or after divorce or the annuity starting date).

F. **Trustee and Plan Administrator:**

Name of Investment Manager is the Trustee for the Plan.

Name of Company is the Plan Administrator.

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*It is recommended that a **draft** QDRO be submitted for review prior to filing with the court.*