



Pension Analyst

Compliance Bulletin

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Tribal court domestic relations orders may be qualified DROs

The Department of Labor (DOL) recently issued [Advisory Opinion 2011-03A](#) to provide guidance regarding the treatment of domestic relations orders (DROs) issued by tribal courts under ERISA's qualified domestic relations order (QDRO) rules. The DOL concluded that such tribal court orders may be recognized as QDROs provided applicable State law recognizes or treats tribal court orders as issued pursuant to state law.

Background

The sponsor of a qualified retirement plan asked the DOL to determine whether a DRO issued under tribal law by a family court of the Navajo Nation would be a "judgment, decree, or order made pursuant to a State domestic relations law" within the meaning of ERISA's QDRO rules.

The question arose because many of the plan participants reside in New Mexico and are members of the Navajo Nation. As a result, the plan sponsor received several drafts of DROs issued by the Family Court of the Navajo Nation. The Family Court of the Navajo Nation is a "tribal court" for the peoples comprising the Navajo Nation.

Law and analysis

ERISA's QDRO rules define a DRO as "any judgment, decree, or order (including approval of a property settlement agreement) which relates to the provisions of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant and is made pursuant to a State domestic relations law (including a community property law)."

Federal law does not recognize Indian tribes as States, or as agencies or instrumentalities of States. While existing laws do grant Indian tribes jurisdiction over any child custody proceeding involving an Indian child who lives within a tribal reservation, federal laws do not recognize DROs of tribal courts involving divorce and the division of marital property on divorce.

However, some States, such as Oregon, have adopted laws granting tribal courts the authority to issue DROs and recognize orders issued by such tribal courts.

Conclusion

The DOL concluded that tribal court DROs may be treated as DROs under the QDRO rules if applicable State law recognizes or treats tribal court orders as issued pursuant to state law. In this particular situation, the information provided by the plan sponsor did not indicate whether New Mexico law recognizes the Navajo Nation Family Court orders as DROs. As a result, the DOL was not able to conclude that the orders satisfied ERISA requirements for DROs.

Impact on plan administration

Plan sponsors that have participants affected by tribal courts may want to determine if applicable State laws recognize the authority of tribal courts to issue DROs and then make sure their QDRO administrative procedures properly reflect those State laws. Plan sponsors that use Prudential's QDRO Outsourcing Service do not have to take any action as this service has updated their procedures in the event that they are presented with a DRO issued by a tribal court.

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