

**MEMO# 13679**

June 28, 2001

## **DEPARTMENT OF LABOR ADVISORY OPINION CONCERNING STATUS OF INCOME WITHHOLDING NOTICE AS A "DOMESTIC RELATIONS ORDER"**

[13679] June 28, 2001 TO: PENSION COMMITTEE No. 41-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 40-01 RE: DEPARTMENT OF LABOR ADVISORY OPINION CONCERNING STATUS OF INCOME WITHHOLDING NOTICE AS A "DOMESTIC RELATIONS ORDER" The Department of Labor recently issued an advisory opinion interpreting the term "domestic relations order" under section 206(d)(3)(B)(ii) of ERISA in the context of certain income withholding notices.<sup>1</sup> A copy of the opinion is attached and summarized below. The advisory opinion was issued in response to a request by the New York State Office of Temporary and Disability Assistance, Division of Child Support Enforcement (DCSE), which noted that state and county agencies routinely issue withholding notices pursuant to federal and state law to enforce child support orders against obligor parents. The child support orders are made pursuant to state family or domestic relations law, and may seek to enforce the child support obligation from various sources of income, including benefits due to a participant in a pension plan. The DCSE also represented, however, that plan administrators frequently determine that such an order does not constitute a qualified domestic relations order (QDRO) under ERISA, contending that such an order is not a "judgment, decree, or order," and require that the agency obtain a court order requiring the plan to withhold the child support payments. The Department of Labor stated in the advisory opinion that an income withholding notice is a "domestic relations order" as defined in section 206(d)(3)(B)(ii). The opinion notes that such a notice (1) relates to the provision of child support to a child of a participant in a pension plan; (2) enforces a child support order that is made pursuant to state family or domestic relations law; and (3) is made by DCSE or a county child support enforcement agency, which have jurisdiction over child support matters. In particular, the Department noted that section 206(d)(3)(B)(ii) does not specify that, in order for a judgment, decree, or order to be a "domestic relations order" for the purposes of section 206(d)(3), it must be issued by a court. The Department further noted, however, that a plan administrator that receives such a notice is still obligated to determine whether the notice is a QDRO, which the opinion describes as an inherently factual question on which the Department is unable to opine. Kathy D. Ireland Associate Counsel Attachment Attachment (in .pdf format)

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.