

# TABLE OF CONTENTS

For tips on finding information in the Guide, see page vii.

Section Page

## Tab 100: Introduction and Overview

<b>Introduction</b> .....	¶100	3
<b>The Anti-assignment Rule</b> .....	¶110	9
Types of Plans Affected.....	¶111	10
<b>Overview: Exceptions to the Anti-assignment Provisions</b> .....	¶120	17
<b>Overview: Penalties for Non-compliance</b> .....	¶130	25
Sanctions Under the Internal Revenue Code.....	¶131	25
Sanctions Under ERISA.....	¶132	26
Sanctions for Failure to Honor Judicially Created Exceptions.....	¶133	27
Glossary of Terms.....	¶140	35
Frequently Asked Questions .....	¶150	71

## Tab 200: Exceptions to the Anti-Assignment Rule

<b>Exceptions to the Anti-assignment Rule</b> .....	¶200	3
<b>Transactions That Are Not Assignments or Alienations of Benefits</b> .....	¶210	9
Recovery of Certain Payments Upon Plan Termination .....	¶211	9
Withholding of Federal, State or Local Taxes From Benefit Payments .....	¶212	10
Recovery of Benefit Overpayments .....	¶213	10
Transfer of Benefit Rights to Another Plan .....	¶214	13
Direct Deposit Arrangements.....	¶215	13
<b>Federal Tax Levies and Judgments</b> .....	¶220	21
Steps for the Plan Administrator on Receiving a Tax Levy or Judgment Order .....	¶221	24
What if a Participant Declares Bankruptcy Before a Tax Levy or Judgment Order is Filed? .....	¶222	25
What if Both a QDRO and a Tax Lien Exist? .....	¶223	26
<b>Voluntary and Revocable Assignments</b> .....	¶230	31
The Statutory (10-Percent) Exception.....	¶231	32
The Regulatory Exception .....	¶232	33
Voluntary and Revocable Assignments and QDROs .....	¶233	34
Voluntary and Revocable Assignments and Spousal Consent .....	¶234	35
<b>Embezzlement, Criminal Convictions, Breach of Fiduciary Duties</b> .....	¶240	43
<b>“Killer Statutes”</b> .....	¶250	51
<b>Settlement Agreements</b> .....	¶260	61
<b>Employee Bankruptcy</b> .....	¶270	71
The Bankruptcy Law Problem .....	¶271	72
Administering Plans After <i>Patterson</i> .....	¶272	74
<b>Sample Forms and Documents</b> .....	¶280	85

## Tab 300: Qualified Domestic Relations Orders

<b>Qualified Domestic Relations Orders: Background and Overview</b> .....	¶300	3
Types of Plans Affected.....	¶301	4
Definition of a QDRO .....	¶302	5
Definition of Alternate Payee .....	¶303	7
Plan Procedures to Be Followed.....	¶304	8

	<i>Section</i>	<i>Page</i>
<b>General QDRO Requirements</b> .....	¶310	15
Types of QDROs .....	¶311	16
Items That Must Be Included in Every QDRO .....	¶312	18
Items That May Not Be Included in Any QDRO.....	¶313	22
Definition of Earliest Retirement Age .....	¶314	24
Payments to Non-alternate Payee Beneficiaries Under a QDRO .....	¶315	28
Naming the Participant’s Current Spouse as an Alternate Payee .....	¶316	31
What Happens if the Participant Dies Before a QDRO is Entered or Amended? .....	¶317	36
<b>Application of QDRO Rules to Defined Contribution Plans</b> .....	¶320	41
Amount to Be Paid Under a Stream-of-Payment QDRO .....	¶321	43
Amount to Be Paid Under a Separate-Interest QDRO .....	¶322	44
Timing of Benefit Payments Under a Stream-of-Payment QDRO .....	¶323	45
Timing of Benefit Payments Under a Separate-Interest QDRO .....	¶324	48
What Happens Under a Stream-of-Payment QDRO When the Participant or Alternate Payee Dies? .....	¶325	50
What Happens Under a Separate-Interest QDRO When the Participant or Alternate Payee Dies? .....	¶326	53
<b>Application of QDRO Rules to Defined Benefit Plans</b> .....	¶330	63
Amount to Be Paid Under a Stream-of-Payment QDRO .....	¶331	65
Amount to Be Paid Under a Separate-Interest QDRO .....	¶332	66
Timing of Benefit Payments Under a Stream-of-Payment QDRO .....	¶333	68
Timing of Benefit Payments Under a Separate-Interest QDRO .....	¶334	71
What Happens Under a Stream-of-Payment QDRO When the Participant or Alternate Payee Dies? .....	¶335	73
What Happens Under a Separate-Interest QDRO When the Participant or Alternate Payee Dies? .....	¶336	76
Application of Rules to Stream-of-Payment QDROs .....	¶337	82
Application of the Rules to Separate-Interest QDROs.....	¶338	84
<b>Miscellaneous QDRO Issues</b> .....	¶340	95
1) Will the Alternate Payee Benefit From the Participant’s Future Vesting Service or Benefit Accruals?.....		95
2) How Are the Code Provisions Limiting the Maximum Benefit Payable Under a Defined Benefit Plan Applied?.....		96
3) How Are the Minimum Distribution Requirements of the Code Applied to QDROs?.....		98
4) Is There a Separate Premium Payment to the Pension Benefit Guaranty Corporation Due for an Alternate Payee? .....		101
5) Are There Special Notices That Must Be Provided to Alternate Payees From Time to Time? .....		101
6) Will an Alternate Payee Be Eligible to Obtain a Plan Loan? .....		101
7) What Happens to an Alternate Payee’s Interest in a Plan if the Participant Declares Bankruptcy? .....		102
8) Is There Separate FDIC Protection for an Alternate Payee’s Interest in a Defined Contribution Plan?.....		103
9) What Are the Consequences of a QDRO to a Corporate Insider Subject to SEC Restrictions Under Rule 16(b)? .....		103
10) Will Pension Payments Received by an Alternate Payee Affect the Alternate Payee’s Entitlement to Social Security Supplemental Income Benefits? ....		104
11) May an Alternate Payee’s Attorney Obtain an Award of Attorney Fees From a Plan?.....		105

	<i>Section</i>	<i>Page</i>
12) Can the Expenses of Reviewing or Administering a QDRO Be Charged to the Plan?.....		107
13) How Are QDROs Administered When the Pension Benefit Guaranty Corporation Takes Over a Terminated Plan?.....		110
14) How Should a Plan Administrator Determine the Basis of Employer Stock That Is Transferred to an Alternate Payee in a QDRO?.....		111
15) Can a Plan Administrator Refuse to Qualify a Domestic Relations Order if the Plan Administrator Believes the Domestic Relations Order Was Obtained Because of a “Sham” Divorce?.....		111
16) Is an Income Withholding Notice Issued to a Retirement Plan by a State Child Support Enforcement Agency Considered a Domestic Relations Order? .....		112
<b>Practical Considerations for Alternate Payees or Participants</b> .....	¶350	119
Ask About the Facts .....	¶351	120
Be Able to Explain in English What the QDRO Is Trying to Accomplish.....	¶352	122
Find Out if What the Parties Want to Do Can Be Done .....	¶353	123
Submit Proposed Orders in Draft Form to the Plan Administrator for Approval .....	¶354	124
Have the Order Entered as Soon as Possible After the Administrator Has Approved the Form .....	¶355	125
Communicate With the Plan Administrator.....	¶356	125
<b>Practical Considerations for Plan Administrators</b> .....	¶360	131
Preparing Plan Provisions.....	¶361	131
Preparing Plan Procedures .....	¶362	133
Communicating Essential Information.....	¶363	140
Finding Alternative Solutions .....	¶364	141
Keeping Records of Determinations .....	¶365	142
Outsourcing QDRO Administration .....	¶366	142
Auditing Internal QDRO Procedures .....	¶367	145
Dealing with Rare Occurrences .....	¶368	148
<b>Sample Forms and Documents</b> .....	¶370	149

### **Tab 400: Qualified Plan Loans**

<b>Qualified Plan Loans: Introduction</b> .....	¶400	3
The Prohibited Transaction Exemption .....	¶410	9
Bona Fide Loan Program.....	¶411	10
Specific Plan Loan Provisions .....	¶412	11
Availability of Loans on a Reasonably Equivalent Basis.....	¶413	12
Loans Not Available to Highly Compensated Employees in Amounts Greater Than for Other Employees.....	¶414	14
Reasonable Interest Rate.....	¶415	15
Adequate Security Issues .....	¶416	16
<b>Consequences of Failing to Meet the Prohibited Transaction Exemption</b> .....	¶420	39
Consequences Under ERISA.....	¶421	39
Consequences Under the Internal Revenue Code.....	¶422	40
<b>Code Requirements for Non-taxable Plan Loans</b> .....	¶430	49
Section 72(p) and the Prohibited Transaction Rules .....	¶431	49
Non-taxable Loan Amount.....	¶432	50
Time for Repayment .....	¶433	52
Level Amortization Requirement .....	¶434	55
Treatment of Repayments .....	¶435	59

	<i>Section</i>	<i>Page</i>
Residential Mortgage Investments .....	¶436	60
Enforceable Agreement Requirement .....	¶437	60
Basic Loan Compliance Checklist .....	¶438	61
Correcting Plan Loan Errors Under EPCRS .....	¶439	62
<b>General Tax Code and ERISA Rules</b> .....	<b>¶440</b>	<b>71</b>
Exclusive Benefit Rule .....	¶441	71
Prudence and Diversification .....	¶442	72
Prohibition on Certain Arrangements .....	¶443	73
Tax Code Non-discrimination Requirements .....	¶444	73
Survivor Annuity and Spousal Consent Rules for Distributions .....	¶445	74
Optional Forms of Benefit — Anti-cutback Rule .....	¶446	76
Annual Reporting and Disclosure .....	¶447	76
Plan Asset Regulations and Loan Repayments .....	¶448	76
<b>Other Rules to Consider in Considering Plan Loans</b> .....	<b>¶450</b>	<b>81</b>
Truth in Lending Requirements .....	¶451	81
Individual Retirement Accounts .....	¶452	83
Plan Loans and Perfecting Security Interests .....	¶453	83
Plan Loans and Employee Bankruptcy .....	¶454	83
Plan Loans and Blackout Periods .....	¶455	86
Red Flags Rule .....	¶456	86.1
In-plan Roth Rollovers .....	¶457	86.2
<b>Establishing a Loan Program</b> .....	<b>¶460</b>	<b>87</b>
The Plan Loan Administrator .....	¶461	88
Source of Loan Proceeds .....	¶462	89
Limits on Amounts of Loans .....	¶463	90
Frequency of Granting Plan Loans .....	¶464	92
Repayment Terms .....	¶465	94
Events of Default .....	¶466	96
Action on Default .....	¶467	102
Plan Loan Documentation .....	¶468	104
Plan Loans and Telephonic/Electronic Systems .....	¶469	105
<b>Sample Forms and Documents</b> .....	<b>¶470</b>	<b>109</b>
<b>Treatment of Plan Loans in a Sale of a Business</b> .....	<b>¶480</b>	<b>151</b>
Phases of a Corporate Transaction .....	¶481	151
Assumption of Seller's Plan Determines Loan Treatment .....	¶482	152
Avoiding Loan Default During a Business Sale .....	¶483	153

### Tab 500: Tax Issues

<b>Tax Issues Related to Assignments in General</b> .....	<b>¶500</b>	<b>3</b>
<b>Tax Issues Related to Qualified Domestic Relations Orders (QDROs)</b> .....	<b>¶510</b>	<b>13</b>
Income Tax Consequences of QDRO Payments .....	¶511	14
Rollover Rules Governing QDRO Payments .....	¶512	16
Early Distribution Tax .....	¶513	17
Lump Sum Distribution Tax Treatment .....	¶514	18
<b>Tax Issues Related to Plan Loans and Defaults Under Plan Loans</b> .....	<b>¶520</b>	<b>31</b>
Different Treatment for Principal and Interest Amounts .....	¶521	33
Application of Basis Recovery Rules .....	¶522	36
Early Distribution Tax .....	¶523	41
Withholding of Federal Income Tax .....	¶524	42

	<i>Section</i>	<i>Page</i>
Lump Sum Distribution Requirements.....	¶525	45
Rollover Rules Governing Plan Loans.....	¶526	46
Distributions Upon the Participant’s Death.....	¶527	47

**Tab 600: Welfare Plans, IRAs and Other Non-Qualified Plans**

<b>Welfare Plans, IRAs and Other Non-Qualified Plans.....</b>	<b>¶600</b>	<b>3</b>
<b>Welfare Plan Assignments .....</b>	<b>¶610</b>	<b>9</b>
Group Health Plan Benefit Assignments.....	¶611	10
Life Insurance Benefits.....	¶612	16
Severance Pay Benefits.....	¶613	25
Other Welfare Benefit Plan Assignment Issues.....	¶614	27
<b>Qualified Medical Child Support Orders.....</b>	<b>¶620</b>	<b>47</b>
Types of Plans Affected.....	¶621	48
Definition of a QMED.....	¶622	49
Definition of Alternate Recipient.....	¶623	50
Plan Procedures to Be Followed.....	¶624	51
General QMED Requirements .....	¶625	52
Miscellaneous QMED Issues .....	¶626	67
Practical Considerations for Alternate Recipients or Participants.....	¶627	73
Practical Considerations for Plan Administrators.....	¶628	77
Sample QMED Documents.....	¶629	85
<b>Individual Retirement Accounts (IRAs) .....</b>	<b>¶630</b>	<b>123</b>
IRAs and the Anti-Assignment Rule.....	¶631	123
Borrowing from IRAs, Pledging IRAs as Security and Prohibited Transactions .....	¶632	124
Transfers of IRAs Incident to Divorce.....	¶633	127
IRAs and Bankruptcy .....	¶634	128
Other IRA Assignment Issues .....	¶635	129
<b>Unfunded Deferred Compensation Plans — General Tax Rules.....</b>	<b>¶640</b>	<b>151</b>
Assignments of Unfunded Deferred Compensation Benefits .....	¶641	154
<b>Stock Options .....</b>	<b>¶650</b>	<b>179</b>
<b>Eligible Section 457 Plans.....</b>	<b>¶660</b>	<b>201</b>

**Appendices**

**Appendix I Federal Statutes**

**Appendix II Federal Regulations**

**Appendix III Administrative Rulings and Announcements**

**Appendix IV Court Decisions**

**Index**