***FOOTE* Notes on Retirement**

**Topic:** State / Teacher Pension IBO Election

Scenario

You represent the non employee spouse in a State or Teachers Pension Plan division. The property settlement agreement says that your client “is awarded one half of the marital portion of the pension based on the Sims formula, including any future DROP account proceeds should participant enter the DROP program.” Upon retirement, employee spouse avoids the DROP program and instead signs up for the Initial Benefit Option (IBO) and withdraws a $75,000 lump sum from the pension immediately upon retirement.

Questions

1. Did the property settlement language award your client the IBO proceeds?
2. Can the attorney preparing the QDRO include language about the IBO if it is not in the property settlement?

Proposed Answers

An Initial Benefit Option (IBO) is a pension option offered by all State, Teachers’ and most municipal plans. It allows the participant to withdraw up to three (3) years of monthly pension payments in one lump sum payment which then reduces future monthly benefits accordingly. An IBO distribution is, in fact, part of the pension benefit and should be assumed as awarded in the above language. However, if it is not in the property settlement, there becomes a higher chance that it may not be put in the QDRO. State and Municipal Plan Administrators will NOT divide the IBO if it is not specifically mentioned in the QDRO. The inclusion of all possible benefits of a particular pension plan in the property settlement agreement will always allow future remedial measures, if necessary.