

Qualified Domestic Relations Orders (QDRO)

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A. Background

Pension benefits generally may not be assigned or alienated. ERISA and the Internal Revenue Code (Code), however, provide an exception for certain domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order (order) meets the specific legal requirements to be a qualified domestic relations order (QDRO). ERISA and the Code also provide procedures for administration of benefits while an order is being reviewed to determine whether the order is a QDRO.

Among the changes to the sixth edition of this internal guidance are—

- Clarifying that PBGC has established reasonable procedures governing its determination of the qualified status of an order and the administration of QDROs in the publication “Qualified Domestic Relations Orders and PBGC” (see section B)
- Clarifying PBGC’s qualification of orders with respect to: (1) the amount of benefit to be paid to the alternate payee under a shared payment order (see section E.2.a); (2) guidance on early retirement subsidies (see section E.2.d); (3) when benefit payments start (see section E.4); (4) the benefit form (see section E.5); (5) when the alternate payee’s benefit “commences” for the purposes of determining whether the benefit reverts to the participant (see section E.8); (6) spousal rights of certain alternate payees (see section E.9)
- Extending to 120 days the following periods: (1) upon non-qualification by PBGC of a signed order, the period that PBGC will suspend all or a portion of the participant’s benefit or that PBGC will delay commencement of the participant’s benefits (see section F.2.a.2); (2) upon review of a draft order or upon written notification of a pending order, the period that PBGC will delay commencement of the participant’s benefits (see section F.2.a.3); (3) upon receipt of a joinder, the period that PBGC will delay commencement of the participant’s benefits (see section G.5.b)
- Clarifying special rules with respect to: (1) QDRO payments to an alternate payee (see section G.1); (2) payment arrangements made by the parties that are not included in the terms of the order (see section G.3); and (3) the issuance of benefit determination letters with appeal rights to participants and alternate payees including, but not limited to, a child or other dependent of the participant (see section G.4)
- Clarifying that under no circumstances will PBGC enforce the terms of a QDRO unless PBGC has on file the original order or a certified or authenticated copy of the order (see section G.6)
- Moving to an appendix guidance for orders qualified by the prior plan administrator that was formerly in section E.5.b and section F.2.b (see Appendix A)

B. Scope and Effective Date

This internal guidance statement provides guidance for determining whether an order relating to the benefit of a participant in a PBGC-trusteed plan is a QDRO. This internal guidance statement also

provides guidance on application of PBGC's special rules and limitations to QDROs and administration of benefits while PBGC is reviewing an order.

This internal guidance statement applies to all orders issued with respect to benefits in PBGC-trusteed plans, including both orders submitted to PBGC after PBGC has become trustee and orders issued before PBGC trusteeship (whether or not the order was qualified by the plan administrator).

Consistent with section 206(d)(3)(G)(ii) of ERISA, PBGC has established reasonable procedures governing its determination of the qualified status of an order and the administration of QDROs. These procedures are provided and maintained in the publication "Qualified Domestic Relations Orders and PBGC." This internal guidance statement reflects the procedures set forth in that publication. In any situation where this internal guidance statement conflicts with that publication, the publication will control.

This internal guidance statement is effective upon issuance.

C. Definitions

1. Alternate payee means a participant's spouse, former spouse, child, or other dependent who, under a qualified domestic relations order, has a right to receive all or a portion of the participant's pension benefits under a plan. PBGC will generally accept the determination by a court or appropriate entity that a person designated in an order as an alternate payee meets the definition of an alternate payee under ERISA.
2. Contingent alternate payee means a person who qualifies as an alternate payee and whose benefit is contingent upon the death of the alternate payee. If the order provides a separate interest, the contingent alternate payee will receive the benefit only if the alternate payee dies before commencing benefits. If the order provides a shared payment, the contingent alternate payee will start the benefit upon the death of the alternate payee (if payments have started), and the benefit will continue until the earlier of the participant's or contingent alternate payee's death or some other event specified in the order. A contingent alternate payee who is not a former spouse of the participant cannot receive a surviving spouse benefit (a qualified joint-and-survivor annuity (QJSA) or a qualified pre-retirement survivor annuity (QPSA)). If a contingent alternate payee is designated, the alternate payee's benefit may be actuarially adjusted to reflect the possibility of payment to a contingent alternate payee.
3. Court or Appropriate Entity means a state court or other appropriate entity, including, but not limited to, a state agency with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law.
4. Domestic Relations Order (order) means any judgment, decree, or order (including approval of a property settlement) issued by a court or appropriate entity (see section C.3 above). To be a domestic relations order, the order must relate to child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant and be issued pursuant to state domestic relations law. There is no PBGC requirement that the participant or alternate payee sign or otherwise endorse or approve the order. A wage withholding, garnishment, or other type of order may also be a domestic relations order if the criteria of this paragraph are met. For orders that are not domestic relations orders or that are not issued by a state court or appropriate entity, see section G.5 below.

5. Draft Domestic Relations Order (draft order) means an order, in draft form, which a court or other appropriate entity has not issued.
6. Qualified Domestic Relations Order (QDRO) means a domestic relations order that gives an alternate payee the right to receive all or a portion of the benefits (including disability pension benefits) payable with respect to a participant under the plan and meets certain other legal requirements concerning the information and benefits provided. A plan administrator determines whether an order is qualified. However, after PBGC trusteeship, PBGC determines whether an order is qualified under PBGC rules.
7. State means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

D. Types of Domestic Relations Orders

PBGC recognizes two basic types of orders: separate interest orders and shared payment orders.

A separate interest order generally provides that the alternate payee is to receive a portion or all of the value of the participant's benefit with payments calculated based on the lifetime of the alternate payee. The benefit is payable without regard to the participant's benefit form or payment status.

A shared payment order provides to the alternate payee a portion or all of each of the participant's pension payments while the participant lives or for a specified shorter period.

If the alternate payee is the participant's spouse or former spouse, an order may provide that the spouse or former spouse will be treated as the participant's spouse for purposes of survivor benefits (QPSA and/or QJSA) when the participant dies.

E. PBGC Qualification Requirements and Administration Issues

This section E provides the guidelines PBGC follows when an order is submitted to PBGC for qualification. PBGC will qualify a submitted order only if the order meets the requirements set forth in the paragraphs in this section and in Technical Procedure (TP) 13.2 Review Domestic Relations Orders of the OBA Operations Manual. The "QDRO checklist" in TP 13.2 is a distillation of legal requirements found in ERISA, regulations thereunder, DOL guidance, and in case law, and any updates to the checklist will be by joint OBA-OGC decision. For guidance regarding QDROs that were qualified by the prior plan administrator, see Appendix A below.

1. Identification of Plan, Participant, and Alternate Payees

Qualification

The order must provide the name of each plan, the name and address of the participant, and the name and address of each alternate payee (including each contingent alternate payee) covered by the order. (PBGC will not reject an order that misstates or omits some of this information if PBGC records clearly contain the correct information.)

If the alternate payee is a minor, the order must provide the name and address of the guardian or other legal representative to whom PBGC will send payments on behalf of the minor.

Administration

A plan may merge with another plan or may change its name after the order has been filed and qualified by the former plan administrator. If it is unclear whether the plan named in

the order is the same as that trustee by PBGC, request guidance by emailing PSDGuidance@pbgc.gov.

2. Amount of Benefit to be paid to the Alternate Payee

Qualification

The order must clearly state the amount of benefit to be paid to the alternate payee. If an order is written in a way that requires PBGC to calculate the alternate payee's benefit, the order must contain sufficient information to enable PBGC to make the calculation. If an order contains both a formula and a specified dollar amount, PBGC will accept the dollar amount specified in the order. For surviving spouse benefits, see section E.9 below.

The combined value of benefits of the participant and alternate payee may not exceed the value of the participant's benefit under the plan and may not exceed the value of the participant's PBGC termination benefit.

a. Shared Payment Domestic Relations Order

A shared payment order may specify that the alternate payee will receive a specified dollar amount or percentage of each monthly payment to the participant.

The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan). The order also may provide for the benefit to change on a given date (for example, 5 years from the date the order goes into effect) – or upon the occurrence of a particular event – without specifying the actual date (for example, termination of the alternate payee's benefits upon the alternate payee's remarriage or upon reaching the age of majority but without specifying that date or exact age).

If the order does not specify the future date or if PBGC cannot determine the future date with respect to a change of the alternate payee's benefit, then, in accordance with the terms of the order, the parties will be responsible for notifying PBGC in writing of that date or for submitting an amended domestic relations order, specifying the change to the alternate payee's benefit, in order for PBGC to implement the change to the benefit. See also section G.3 below.

b. Separate Interest Domestic Relations Order

PBGC will qualify a separate interest order only if, when the order is submitted to PBGC for determination of its initial qualified status, neither PBGC nor the plan made a payment to the participant for the benefit to which the order applies.

A separate interest order may specify that the alternate payee will receive a benefit that is actuarially equivalent to a given amount or percentage of the participant's benefit. The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan).

An order providing for payment of an actuarially equivalent benefit must state the date as of which the actuarial value of the participant's benefit is to be determined. In general, if the order does not specify the basis for actuarially equivalent benefits, PBGC will use plan factors. If plan factors are unknown or unreasonable, PBGC will generally use PBGC factors.

Alternatively, the order may provide that the alternate payee will receive a specified payment amount, for example, a specified monthly amount for the life of the alternate payee.

c. Alternate Payees as QPSA and QJSA Recipients

An order may provide that a spouse or former spouse is to be treated as a surviving spouse for all or a portion of the participant's benefit. See section E.9 below.

d. Early Retirement Subsidy

(1) Separate Interest Domestic Relations Order

PBGC will not fail to qualify a separate interest order solely because the order provides for payment of all or a portion of the participant's plan-provided early retirement subsidy to an alternate payee.

(2) Shared Payment Domestic Relations Order

Unless the shared payment order specifies otherwise, if the alternate payee is assigned a percentage share of the participant's benefit, the alternate payee's share will automatically include a portion of the early retirement subsidy if the participant retires with an early retirement subsidy.

If an alternate payee is assigned a dollar amount of the participant's benefit, PBGC will pay the alternate payee the dollar amount specified unless the order states the alternate payee is to receive a different dollar amount if the participant retires with an early retirement subsidy.

Administration

Early Retirement Subsidy in Separate Interest QDROs

PBGC will comply with separate interest QDROs that provide that all or part of the participant's early retirement subsidy be paid to the alternate payee. However, PBGC will not pay any portion of the participant's early retirement subsidy to an alternate payee unless and until the participant retires early. However, if the alternate payee is assigned the entirety of the plan benefit including, but not limited to, all survivor benefits otherwise payable to a surviving spouse, then PBGC will treat the participant's benefit, for purposes of the early retirement subsidy, as having commenced on the alternate payee's annuity starting date.

PBGC will seek repayment of any post-DOPT subsidy amounts paid to the alternate payee before the participant retired early. See PBGC Internal Guidance Document Recoupment, Recovery and Administrative Correction.

If the QDRO provides that all or part of the participant's early retirement subsidy be paid to the alternate payee and the alternate payee commences benefits before the participant, the alternate payee's benefit will be recalculated, in accordance with PBGC's actuarial principles and practices, when the participant retires with an early retirement subsidy. The alternate payee's share of the early retirement subsidy will be adjusted for several factors including the benefit form elected by the alternate payee, the age difference between the participant and alternate payee, and when the alternate payee begins or began receiving benefits. For the application of Title IV limitations to plan benefits with early retirement subsidies, see Appendix B below.

If the alternate payee goes into pay and has died before the participant goes into pay, the early retirement subsidy will remain with the participant because the subsidy is no longer assignable following the alternate payee's death, regardless of whether all or a portion of the subsidy was assigned to the alternate payee.

If the alternate payee has gone into pay and the participant subsequently dies before going into pay, the early retirement subsidy will no longer be a payable plan benefit. However, the early retirement subsidy (if any) on the QPSA with respect to the participant's remaining separate interest will remain a payable plan benefit to the surviving spouse.

If a separate interest QDRO is silent about early retirement subsidies, PBGC generally will not pay any portion of the subsidy to the alternate payee. This includes all cases where PBGC qualifies the QDRO. However, if a separate interest QDRO was qualified by the former plan administrator prior to trusteeship, see Appendix A below.

3. PBGC Adjustment of Plan Benefits

Qualification

PBGC will qualify the order whether or not the order specifies how to allocate between the participant and the alternate payee any benefit adjustments PBGC must make pursuant to Title IV of ERISA (including adjustments to estimated and final termination benefit levels).

Administration

If the order specifies how PBGC benefit adjustments are to be allocated between the participant and alternate payee, PBGC will follow the order to the extent that PBGC can make the required Title IV benefit adjustments.

If an order offers no guidance on how PBGC will allocate the Title IV benefit adjustments between the participant and alternate payee, PBGC will adjust benefits as follows:

- (1) If the QDRO awards a specified percentage of the participant's benefit amount or value to the alternate payee, PBGC will adjust in an actuarially proportional manner the benefits to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit. This generally involves: (i) treating each party as having been assigned the entire plan benefit; (ii) applying all applicable Title IV limitations to that plan benefit amount (for example, determining the minimum of (a) the Maximum Insurance Limitation adjusted for the alternate payee's (or participant's) age and form and (b) the plan benefit that would be payable over the alternate payee's (or participant's) lifetime); and (iii) multiplying the total monthly termination benefit calculated in (ii) by the percentage of the benefit, specified in the QDRO, assigned to the alternate payee

(or participant). However, based on the terms of the QDRO and relevant facts and circumstances, PBGC may employ alternative methods to ensure that the Title IV limitations have been applied to each party's plan benefit in an actuarially proportional manner. For the application of Title IV limitations to plan benefits with early retirement subsidies, see Appendix B below.

(2) If a QDRO awards a specified dollar amount of the participant's benefit to the alternate payee, PBGC will first modify the participant's benefit to reflect PBGC's adjustment. The specified dollar amount awarded to the alternate payee will not be adjusted for an increase and will be reduced only if the total decrease to be made exceeds the participant's benefit.

4. When Benefit Payments Start

Qualification

The order must either specify a date the alternate payee's benefit will start or provide that the alternate payee will choose a first payment date.

PBGC will not qualify an order requiring an annuity starting date that conflicts with section F of PBGC Internal Guidance Document Annuity Starting Dates.

a. Shared Payment Domestic Relations Order

PBGC will not qualify a shared payment order that specifies an alternate payee's first payment date that is earlier than the later of (1) the date PBGC receives the order that is ultimately qualified or (2) the participant's first payment date. If PBGC internal guidance or the QDRO requires an alternate payee to begin his or her benefit as of a specific date (for example, no later than the date the participant commences benefits), PBGC will generally also enforce this provision in accordance within section F.2 of PBGC Internal Guidance Document Annuity Starting Dates.

b. Separate Interest Domestic Relations Order

PBGC will not qualify a separate interest order that specifies an alternate payee's first payment date that is earlier than the date PBGC receives the order that is ultimately qualified.

If the participant is not yet in pay status, PBGC will not qualify a separate interest order requiring the alternate payee's earliest first payment date to be earlier than the later of (1) the participant's earliest PBGC retirement date (EPRD) or (2) the date that the participant reaches age 50. For EPRD, see PBGC Internal Guidance Document Earliest PBGC Retirement Date.

Administration

In addition to the above restrictions, PBGC will generally not start benefit payments to an alternate payee before the alternate payee applies for benefits.

5. Benefit Form

Qualification

The order must specify the benefit payment form available to the alternate payee or state that the alternate payee may select the benefit form at the time the alternate payee applies for benefits from PBGC.

a. PBGC Qualification of Domestic Relations Orders

An order must meet the following benefit -form requirements to be qualified by PBGC:

(1) Shared Payment Domestic Relations Order

All shared payment orders must provide for the alternate payee to receive part or all of each payment that would otherwise be made to the participant. However, the order may provide for payments to the alternate payee to begin later and/or end sooner than the participant's payments.

(2) Separate Interest Domestic Relations Order

All separate interest orders must provide for payment to the alternate payee in the automatic form payable to unmarried participants under the plan or in any of PBGC's optional single-life annuity forms.

PBGC will not qualify a separate interest order that provides for payment of a joint-life annuity to the alternate payee and his or her beneficiary. In the unlikely event that the plan provides that the plan will automatically pay an alternate payee a form that is different from the plan's automatic form for unmarried participants, request guidance by emailing PSDGuidance@pbgc.gov.

PBGC also will qualify an order that pays a temporary life annuity for child support or alimony.

Administration

Regardless of the plan's terms or the QDRO's terms, an alternate payee entitled to separate interest benefits may elect any PBGC optional single-life annuity form. For paying de minimis lump sums to an alternate payee, see PBGC Internal Guidance Document Lump Sum Benefit Payments.

b. Pre-Trusteeship Domestic Relations Orders

See Appendix A below.

c. Alternate Payees as QPSA and QJSA Recipients

The order may provide for an alternate payee who is the former spouse of the participant to receive surviving spouse benefits (QJSA and/or QPSA) upon the participant's death, regardless of whether the participant has subsequently remarried. See section E.9 below.

PBGC will not disqualify a domestic relations order solely because the order requires the alternate payee to be treated as surviving spouse for part (but not all) of the participant's benefit.

If the QDRO includes such a provision, PBGC will treat the applicable part of the participant's benefit as payable to the plan participant married to the alternate payee (for example, payable in the form of a QJSA unless waived by the participant with the alternate payee's consent) and the remaining portion unaffected by the terms of the order, payable in another form of annuity (such as a straight life annuity (SLA) or QJSA with the subsequent spouse). Although the participant's benefit is payable in two benefit forms, the participant's benefit will otherwise be treated as a single benefit. For example, each portion of the participant's benefit (i.e., the portion subject to the treat-as-spouse provision and the portion unaffected) will be subject to the same annuity starting date. (If the alternate payee waives his or her right to surviving spouse benefits, then the participant's benefit will be unaffected by the terms of the QDRO with respect to the form of benefit.)

If PBGC receives an order after the participant's first payment date, PBGC will not qualify the order if the order requires that the participant's benefit form or designated beneficiary of a joint-and-survivor annuity be changed. For example, if the participant is already receiving a straight-life annuity or a joint-life annuity with a subsequent spouse, PBGC will not qualify an order changing the benefit form to a joint-life annuity with the alternate payee.

If the alternate payee was to be treated as a participant's surviving spouse under the QDRO and the alternate payee has died before the participant's first payment date, those terms of the QDRO under which the alternate payee would be treated as surviving spouse will no longer have effect (i.e., PBGC would not pay a joint-life annuity with an already-deceased contingent annuitant).

6. When Benefits Stop

Qualification

An order must indicate when payments to the alternate payee will stop. The terms of the order, the type of order, or the benefit form of the participant and/or alternate payee may indicate when the alternate payee's benefits stop.

a. Shared Payment Domestic Relations Order

Under a shared payment order, payments to the alternate payee must stop no later than when payments to the participant stop. An order may also provide for benefits to stop upon the occurrence of a specified event, such as remarriage of the alternate payee or the date a child reaches a specified age.

If payments will stop upon a specified event, the order should require the affected parties to notify PBGC in writing of the occurrence of the event. If the order does not specify that the parties must provide written notice to PBGC, the qualification determination letter will communicate this requirement to them. See section G.3 below.

b. Separate Interest Domestic Relations Order

Under a separate interest order, payments to the alternate payee will stop consistent with the alternate payee's benefit form.

c. Alternate Payees as QPSA and QJSA Recipients or Beneficiaries

Under certain circumstances, the order may provide for the alternate payee to be treated as a surviving spouse (see section E.9 below) or a beneficiary (see section E.7 below).

7. Death of Participant

Qualification

An order may, but is not required to, specify what happens to payments when the participant predeceases the alternate payee.

a. Shared Payment Domestic Relations Order

Shared payments to the alternate payee stop upon the participant's death (or never start if the participant dies before entering pay status).

b. Separate Interest Domestic Relations Order

The participant's death does not affect payments under the alternate payee's separate interest.

c. Alternate Payees as QPSA and QJSA Recipients

A shared payment or a separate interest order may provide for an alternate payee who is the former spouse of the participant to be treated as the participant's surviving spouse (even if the participant remarries) for the purpose of receiving surviving spouse benefits (a QPSA or QJSA). See section E.9 below.

d. Certain and Continuous Annuities

A shared payment or a separate interest order may designate the alternate payee as the beneficiary under a certain-and-continuous (C&C) annuity. The C&C beneficiary designation under the QDRO will supersede any prior C&C beneficiary designation.

Administration

If the order is silent as to what happens to payments when the participant predeceases the alternate payee, PBGC will apply section E.7.a for a shared payment order and section E.7.b for a separate interest order.

8. Death of Alternate Payee

Qualification

The order may, but is not required to, specify what happens to payments when the alternate payee predeceases the participant.

a. Shared Payment Domestic Relations Order

A shared payment order may provide for continuation of payments to a contingent alternate payee named in the order upon the death of the alternate payee. If the alternate payee (and any contingent alternate payee)

dies before the participant, PBGC will return the participant's monthly benefit payments to the amount that the participant would have been receiving had there been no order. An order cannot provide for an alternate payee's payments to continue to an alternate payee's surviving spouse or to an estate upon the alternate payee's death.

b. Separate Interest Domestic Relations Order

A separate interest order may provide for either of the following to occur upon the death of an alternate payee who dies before the alternate payee's benefits commence (see below): (1) payment of the separate interest to a contingent alternate payee; or (2) reversion of the separate interest to the participant, thereby increasing the participant's payment to the level the participant's payment would have been without the order including, but not limited to, reimbursing the participant for payments that were reduced on account of the order.

If the alternate payee dies after entering pay status under the order, the benefit form of the separate interest benefit chosen will govern. For example, under a single life annuity, payments end. Under a period certain and continuous annuity, payments continue to the alternate payee's designated beneficiary.

PBGC will not qualify a separate interest order that provides for the alternate payee's benefit to revert to the participant if the alternate payee dies after the alternate payee's first payment date.

Administration

If the QDRO is silent on what happens if the alternate payee dies before the alternate payee's benefits commence, PBGC will treat the separate interest as reverting to the participant. For purposes of this section E.8, a benefit payable to the alternate payee "commences" on the alternate payee's annuity starting date. The annuity starting date is a date selected by the alternate payee when applying for benefits, or another date on which benefits must commence under the QDRO, under the Plan, or by law (including the Required Beginning Date).

If the alternate payee's separate interest would revert to the participant but the participant is also deceased at the alternate payee's death, the benefit will revert to PBGC because the order cannot provide for any further assignment.

9. Spousal Rights of Certain Alternate Payees

Surviving spouse rights must be explicitly assigned in the order and cannot be assigned to any class of alternate payees other than to a spouse and/or to a former spouse.

Qualification

If a participant is married when benefit payments begin and if the spouse has not waived his or her right to a QJSA, the spouse will retain the right to the survivor annuity regardless of whether the participant and spouse later divorce. See PBGC Internal Guidance Document Spousal Consent (Qualified Joint-and-Survivor Annuities) and PBGC Internal Guidance Document Annuity Benefit Forms.

PBGC will not qualify an order under which the alternate payee would relinquish the surviving spouse benefit ("reverse QDRO") under a joint-and-survivor annuity after the first payment date.

PBGC will qualify an order awarding an alternate payee surviving spouse benefits (QPSA and/or QJSA) only if –

- (1) PBGC receives the order before the participant's first payment date and
- (2) the alternate payee is a current or former spouse of the participant

The alternate payee may be treated as the participant's spouse with respect to all or a portion of the participant's accrued benefit (in the case of a shared payment order) or with respect to all or a portion of the accrued benefit in which the participant retains a separate interest (in the case of a separate interest order). These survivor benefits are in addition to any separate interest or shared payments the alternate payee has a right to receive under the order.

Administration

PBGC will pay survivor benefits in accordance with the terms of the QDRO regardless of whether, before or after the order was issued, the participant remarried or designated a different beneficiary on another form.

A plan may provide for survivor benefits in addition to the survivor benefits required by ERISA (for example, a steel plan "Free Surviving Spouse Benefit"). A QDRO may provide that a part or all of such other survivor benefits will be paid to an alternate payee (rather than to the person who otherwise would be entitled to receive such death benefits under the plan) regardless of whether the alternate payee meets the definition of a widow/widower under the plan.

F. Reviewing Orders; Suspending Payments; Revising Orders

1. Review of Domestic Relations Orders

a. Regular Processing

PBGC will formally qualify an order only if PBGC receives an original order or a copy certified or otherwise authenticated under state domestic relations procedures. PBGC will impose no time limit on the submission of orders.

For domestic relations orders not issued by a state court or other appropriate entity and for orders that are not domestic relations orders, see section G.5 below.

PBGC will inform the interested parties in writing of its formal qualification determination. Interested parties include the parties named in the order, their legal counsel, and any representatives designated in writing by the parties.

PBGC's formal qualification determination will explain why PBGC did not qualify the order, if not qualified, or how PBGC will comply with the QDRO, if qualified. The participant and alternate payee will have the right to appeal PBGC's formal qualification determination.

The qualification status of an order will become final when the appeal period ends. If no extension to file an appeal is granted and if no appeal is filed, the

appeal period usually ends 45 days after PBGC sends a formal qualification determination to the interested parties. For correcting and revising a formal qualification determination, see PBGC Internal Guidance Document Benefit Changes.

PBGC will not qualify a draft order. However, PBGC will conduct an informal review of a draft order and advise the parties whether the draft, if submitted as an order, would satisfy ERISA's qualification requirements. This informal review is a courtesy to the parties that aims to assist interested parties in drafting an order that the parties will submit to a court or appropriate entity. PBGC's informal review of a draft order does not constitute a formal qualification determination, does not include the right to appeal, and is not binding on PBGC.

b. Post-Mortem Orders

A participant or alternate payee may die before an order is issued by a court or appropriate entity. Such orders are post-mortem domestic relations orders.

PBGC will not fail to qualify a post-mortem order solely for the reason that the order was issued by a court or appropriate entity on or after the participant's death (meaning, PBGC will qualify a post-mortem order if it satisfies all of the requirements that otherwise must be met for an order to be a QDRO).

However, if the participant was married at death or had already begun receiving benefits, usually no benefits are available for assignment pursuant to a DRO. For example, in the case of a participant who dies before commencing benefits, QPSA rights vest solely in the spouse at date of death and cannot be reassigned under a post-mortem DRO. Also, for example, where a participant already received all benefits payable under the plan before death – such as commencing benefits under a straight life annuity – PBGC will not qualify a post-mortem shared payment order or a separate interest order that would assign benefits to an alternate payee. But note: in some cases, certain limited benefits may remain available for assignment after a participant's death, such as the non-QPSA portion of the benefit assigned as a separate interest, where a married participant dies before benefit commencement. Consequently, if the participant was married at death or had already begun receiving benefits when a post-mortem order is received by PBGC, refer the order to the PSD guidance mailbox to determine if any benefits available to be assigned.

As with other domestic relations orders (see section F.1.a above), PBGC will impose no time limit on the submission of post-mortem orders.

2. Suspending Payments while Reviewing an Order

a. Orders Submitted after PBGC Becomes Trustee

While PBGC determines whether an order is qualified, PBGC will suspend payments to the participant of any amounts that PBGC reasonably determines

the order would assign to the alternate payee. For draft orders or written notification of pending domestic relations orders, see section F.2.a.3 below.

Generally, the suspension will be effective with the monthly payments for the next month after PBGC receives the order unless the order specifies otherwise.

If payment suspension is delayed for administrative reasons, PBGC will seek repayment of any resulting overpayments. See PBGC Internal Guidance Document Recoupment, Recovery and Administrative Correction.

(1) Order Qualified

If the order is qualified, PBGC will begin making payments (including any suspended benefit payments) to the alternate payee as soon as the qualification status is final and the alternate payee has submitted a valid benefit application. See section F.1.a above and section F.2.a.4 below.

The alternate payee's first payment date cannot be earlier than the benefit suspension date.

(2) Order Not Qualified

If the order is not qualified, PBGC will continue suspending payments to the participant until the qualification status is final. See section F.1.a above.

However, the suspension of payments will continue if, before the qualification status is final:

- An interested party appeals the qualification determination. PBGC will continue suspending payment while the appeal is pending. If PBGC decides on appeal that the order is not qualified, PBGC will suspend payment for an additional 120 days from the date PBGC notifies the interested parties in writing that PBGC has made a decision on the appeal.
- Either party notifies PBGC in writing that the parties will submit a revised order to PBGC for qualification. PBGC will continue suspending payment for an additional 120 days from the date of the parties' written notification to PBGC.
- PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review an amended order until after more than 120 days has passed. PBGC will grant an extension of the suspension period based on the facts and circumstances.

If PBGC receives an amended order before the benefit suspension period has ended, PBGC will continue suspending payments while reviewing the amended order for qualification. Depending on the qualification determination, PBGC will continue suspending payments as described above.

If PBGC receives no amended order before the benefit suspension period has ended, PBGC will stop suspending benefits and pay any suspended benefit payments to the participant. See section F.2.a.4 below.

(3) Draft Orders or Written Notification of Pending Order

PBGC will not suspend all or a portion of a participant's benefit payments solely because PBGC receives a draft order submitted for informal (i.e., non-binding) review by PBGC or solely because PBGC receives written notice (such as, but not limited to, a letter, fax, email, or a benefit application indicating a pending or final QDRO exists) from an interested party of a pending domestic relations order.

However, if PBGC receives the participant's valid benefit application (or if the participant already has a benefit application pending with PBGC) while PBGC is reviewing a draft order or after PBGC receives written notice (such as, but not limited to, a letter, fax, email, or a benefit application indicating a pending or final QDRO exists), PBGC will delay the participant's first payment date for up to 120 days.

- The 120-day period will allow the parties time to submit the draft (such as an initial draft or a revised draft to address any problems previously noted by PBGC) for review by a court and to obtain a signed order or a certified or authenticated copy.
- The 120-day period will generally begin on the date PBGC notifies the interested parties in writing of the result of the informal review.
- If PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review the order until after the 120 days has elapsed, PBGC will continue to delay the participant's first payment date based on the facts and circumstances.

If PBGC receives an original order or a certified or authenticated copy before the participant's first payment delay ends, PBGC will continue to delay the participant's first payment date while reviewing the order for qualification.

- If PBGC qualifies the order, see section F.2.a.1 above. PBGC will generally honor an alternate payee's annuity starting date that is no earlier than the first of the month following the receipt of the order. See also section E.4 above and section F of PBGC Internal Guidance Document Annuity Starting Dates.
- If PBGC does not qualify the order, see section F.2.a.2 above.

If PBGC receives no order before the participant's first payment delay ends, PBGC will pay any delayed benefit payments to the participant. See section F.2.a.4 below.

PBGC will treat any order submitted to PBGC electronically, such as by email or fax, as a draft order until PBGC receives the original order or a certified or authenticated copy.

(4) Suspended or Delayed Benefit Payments

PBGC will pay any suspended or delayed benefit payments owed to the participant or alternate payee in a single payment with interest (if applicable). See PBGC Internal Guidance Document Underpayment Reimbursement and Interest Payments.

(5) Maximum Benefit Suspension Period

In no event will PBGC suspend or delay benefit payments to a participant for more than 18 months from the alternate payee's earliest possible first payment date under the order.

If PBGC does not complete a formal qualification determination within the 18-month period, PBGC will pay any suspended amounts to the participant.

PBGC will apply the same 18-month limit on benefit payment suspensions for orders (1) submitted to the prior plan administrator for qualification or (2) awaiting a formal qualification determination.

b. Orders Qualified before PBGC Trusteeship

To ensure proper administration, PBGC will evaluate orders qualified before PBGC trusteeship. See Appendix A below.

c. Orders Pending Qualification at PBGC Trusteeship

PBGC will review orders that were awaiting a qualification determination by the plan administrator at trusteeship and determine whether they meet the requirements for a QDRO under the rules in section E above.

PBGC will suspend or continue to suspend payments to a participant or alternate payee while PBGC is reviewing such orders and may seek repayment of any resulting overpayments. See PBGC Internal Guidance Document Recoupment, Recovery and Administrative Correction.

d. Multiple Domestic Relations Orders

PBGC will determine the qualification status of a subsequent order seeking to amend an earlier QDRO under the rules in section E above as well as the rules below.

(1) Orders Vacating Separate Interest QDROs

If the parties decide that the participant's benefits will no longer be subject to a separate interest QDRO, PBGC must receive a subsequent order before the alternate payee's first payment date.

A state court or appropriate entity must issue a subsequent order vacating or nullifying the original separate interest QDRO.

If the participant's benefit commenced on a reduced basis reflecting the terms of an order that is subsequently vacated before the alternate payee's payments commenced, then upon PBGC's review and approval of the vacate order, PBGC will increase the participant's payment to the level the payment would have been without the order, including but not limited to reimbursing the participant for payments that were reduced on account of the order but not paid to the alternate payee.

However, if PBGC receives the vacate order for a separate interest order after the alternate payee's Required Beginning Date and before the alternate payee's first payment date, request guidance by emailing PSDGuidance@pbgc.gov.

(2) Prospective Benefit Changes

When PBGC receives a subsequent order changing an existing QDRO, PBGC will review the subsequent order as a new order. PBGC will suspend benefit payments to the participant and/or the alternate payee affected by the subsequent order.

If PBGC qualifies the subsequent order, PBGC will change the participant's and/or alternate payee's benefits, as appropriate. However, PBGC will make changes prospectively only. If the terms of the subsequent order direct PBGC to make changes retroactively (i.e., before the submission date), PBGC will not qualify the subsequent order.

(a) Changes Prohibited after Alternate Payee's First Payment Date

For a separate interest QDRO after the alternate payee's first payment date, PBGC will not qualify a subsequent order changing, vacating, or correcting the alternate payee's separate interest benefit amount or form provided in the original QDRO.

(b) Changes Prohibited after Participant's First Payment Date

After the participant's first payment date, PBGC will not qualify any order changing the participant's benefit form or joint-life beneficiary.

For example, after the participant's first payment date, PBGC will not qualify an order changing the participant's designated joint-life beneficiary from the participant's former spouse to a current spouse (or vice versa).

(3) Multiple Alternate Payees or Orders

If more than one alternate payee submits an order to PBGC (or if one alternate payee submits more than one order) for qualification and for the same participant's benefit, PBGC will review the orders in the order PBGC receives them. If PBGC qualifies the first order received, PBGC will apply the first order to the participant's benefit. If PBGC also qualifies the second order, PBGC will apply the second order to the participant's benefit that remains after applying the first order.

However, if the first order already assigned the participant's entire benefit and no participant benefits remain that can be assigned, PBGC will not qualify the second order.

Request guidance by emailing PSDGuidance@pbgc.gov if there are unusual circumstances regarding the receipt of orders from more than one alternate payee.

G. Special Rules

1. QDRO Payments to Participant and Alternate Payee

Generally, pension benefits subject to a QDRO may be paid only to the participant and the alternate payee (for example, payments may not be made directly to an attorney for attorneys' fees). Payments made to an alternate payee may be made only in the alternate payee's name, including in instances when payments are sent to a child support agency or to the guardian or other legal representative on behalf of a minor or legally incompetent person.

2. Aggregate Maximum Guarantee (ERISA Sec 4022B)

PBGC will not consider an individual as subject to the aggregate maximum guarantee limitation under ERISA section 4022B and Part 4022B of PBGC's regulations solely because the individual is entitled to benefits under a given plan as both a participant and an alternate payee. See PBGC Internal Guidance Document Aggregate Limit on Benefits Payable from PBGC Funds.

3. Change of Entitlement to Benefits

If the occurrence of an event, such as remarriage of the alternate payee, affects benefits that PBGC is paying, PBGC is not obligated to change the payment of benefits to reflect the event unless and until PBGC receives written notification (in accordance with the terms of the QDRO) of the event.

If the order does not specify the future date or if PBGC cannot determine the future date with respect to a change of the alternate payee's benefit, then, in accordance the terms of the order, the parties will be responsible for notifying PBGC in writing of that date or for submitting an amended domestic relations order, specifying the change to the alternate payee's benefit, in order for PBGC to implement the change to the benefit. See also section E.2.a above.

Otherwise, PBGC will consider proper any payments made prior to written notification. After PBGC receives written notification, if PBGC makes payments that do not reflect the event,

PBGC may seek repayment of any resulting overpayments. See PBGC Internal Guidance Document Recoupment, Recovery and Administrative Correction

PBGC will pay any resulting underpayments in a single payment with interest (if applicable). See PBGC Internal Guidance Document Underpayment Reimbursement and Interest Payments.

PBGC will generally not enforce or modify the terms of a QDRO to reflect any payment arrangements made by a participant and alternate payee that are not included in the terms of the QDRO. Parties who wish to have the terms of a QDRO reflect such arrangements must seek an amended QDRO.

4. Benefit Determination Letters and Appeal Rights

PBGC will issue separate benefit determination letters to the participant and alternate payee regardless of whether the QDRO awards all or a portion of the participant's benefit to the alternate payee. A participant and alternate payee each will have the right to appeal a benefit determination that affects his or her own benefit regardless of the type of QDRO and regardless of whether the alternate payee is the spouse, former spouse, child, or other dependent of the participant. This also applies to participants who received an initial benefit determination before the QDRO was qualified. These participants will, therefore, receive a revised benefit determination letter.

Benefit determinations to alternate payees will not contain confidential information about the participant and vice versa.

5. Orders that are not Domestic Relations Orders

a. Orders Not Issued by a State

PBGC generally will not review an order unless the order was issued by a state court or appropriate entity. See section C.7 above. However, if a state court, under a treaty or other process, incorporates a foreign order into a state order, PBGC will review the order in its entirety on the same basis as a state order and will determine whether the order is a QDRO.

Refer orders not issued by a state court or appropriate entity (for example, a foreign court) to PSD Federal at PSDGuidance@pbgc.gov.

b. Joinders

A joinder is an order by a state court that makes or seeks to make a pension plan a party to a divorce action between a plan participant and his or her spouse usually for the limited purpose of dividing the participant's benefit under the plan. PBGC is not bound by such a joinder because the joinder is preempted by ERISA. Refer joinders to the Office of General Council (OGC).

If the participant submits a valid benefit application (or has a pending benefit application) after PBGC receives a joinder, PBGC will delay the participant's first payment date for a period of up to 120 days from the date of PBGC's written acknowledgement that PBGC has received the joinder request.

c. Other Non-Domestic Relations State Orders

PBGC may receive orders that are not domestic relations orders. For example, a creditor owed money by a participant may send a writ of garnishment or other

order directing PBGC to garnish the pension, as could be done with the individual's wages. Anti-alienation rules under ERISA prohibit the garnishment of pensions. Because such orders are not domestic relations orders and cannot be qualified, PBGC will not comply with such orders.

6. QDRO in PBGC's Records

To enforce the terms of a QDRO, including a QDRO that the prior plan administrator qualified before PBGC trusteeship, the original order or a certified or authenticated copy of the order must be on file with PBGC. This applies even if PBGC records contain a qualification and/or interpretation from the plan or if the prior plan administrator already started enforcing the terms of the order by reducing the participant's benefit and/or commencing payments to the alternate payee.

H. Taxation of Payments to Alternate Payees

PBGC applies federal tax withholding and reporting to payments made under a QDRO in accordance with the Internal Revenue Code. A distribution that is paid to a spouse or former spouse who is an alternate payee under a QDRO is taxed to such spouse or former spouse. A distribution that is paid to a child or other dependent under a QDRO is taxed to the plan participant.

Appendix A: Orders Qualified before PBGC Trusteeship

To ensure proper administration, PBGC will evaluate orders qualified before PBGC trusteeship. During this review, PBGC will not suspend payments to a participant or alternate payee. After this evaluation process, PBGC will contact the participant or alternate payee only if PBGC cannot interpret or comply with the terms of the order.

If the terms of an order have been implemented or enforced by the plan administrator, PBGC will presume the plan followed proper qualification procedures – even if PBGC records do not contain in its records from the plan a written qualification or interpretation issued by the prior plan administrator. Request guidance by emailing PSDGuidance@pbgc.gov before revising the qualified status of any domestic relations order that was qualified by the plan administrator prior to PBGC trusteeship.

With respect to orders qualified (or treated as qualified) by the plan administrator before PBGC trusteeship, PBGC will generally NOT issue a formal qualification letter with appeal rights. PBGC will, however, issue a formal benefit determination letter, with appeal rights and reflecting the assignment of plan benefits to the alternate payee, to both the participant and the alternate payee.

Administration

PBGC will generally follow the administration guidelines set forth in section E above in administering QDROs qualified before trusteeship. However, if the prior plan administrator's interpretation of the QDRO conflicts with PBGC's general administration guidelines (evidenced by the plan documents, communications with the parties, or details of the benefit already in pay), PBGC will adhere to the prior plan administrator's interpretation, except as described below.

Notwithstanding the application of ERISA's Title IV limitations and/or the correction of errors with respect to how the total plan benefit was calculated by the prior plan administrator, PBGC will generally not change QDRO benefits in pay before PBGC trusteeship. However, PBGC may change QDRO benefits (including the prior plan administrator's interpretation of benefits not in pay as of plan trusteeship) if the prior plan administrator's qualification, interpretation, or enforcement of the order conflicts with ERISA, plan provisions, terms of the order, or PBGC internal guidance. In extreme cases, PBGC may need

to notify the parties that the prior plan administrator's qualification of their order was in error and that the order is not qualified. This action can be approved only by PSD Federal in coordination with OGC.

If the QDRO requires an alternate payee to begin his or her benefit as of a specific date (for example, no later than the date the participant commences benefits), PBGC will generally enforce this provision, which may entitle the alternate payee to a retroactive annuity starting date.

PBGC will comply with the annuity benefit form provided to the alternate payee in an order qualified by the former plan administrator or pending at the time of trusteeship if the benefit form is one provided under the plan regardless of whether the benefit form is a PBGC optional form. See section F above. However, under no circumstances will PBGC enforce, or continue to enforce, a provision in an order (including, but not limited to, an order qualified by the prior plan administrator) allowing an alternate payee to receive a joint-life annuity with a contingent annuitant who is the alternate payee's subsequent spouse.

If a separate interest QDRO was qualified by the former plan administrator prior to trusteeship and consistent plan practice (as of when the parties commenced benefits or, if neither party is in pay, as of the time of qualification) was to pay part of the subsidy to the alternate payee when the QDRO was silent about the subsidy, PBGC will pay the subsidy to the alternate payee in the same manner as the former plan administrator would have done.

As in the case of post-trusteeship orders, PBGC will enforce a shared payment order that specifies that the alternate payee's benefit starts later and/or ends sooner than the participant's benefit.

Appendix B: Application of Title IV Limitations to Plan Benefits with Early Retirement Subsidies

With a separate interest QDRO, it is possible for the benefit of the participant to be impacted by the Maximum Insurance Limitation (MIL) while the benefit of the alternate payee remains intact. This is particularly true when the QDRO assigns the entire early retirement subsidy to the participant. For example, assume:

- Benefits are paid monthly and subsidized by the plan for early retirement
- QDRO awards 50% of participant's accrued benefit and none of early retirement subsidy to alternate payee
- QDRO provides that Title IV limits are applied pro rata to plan benefit
- Total early retirement benefit = \$3,000.00
- Unsubsidized early retirement benefit = \$2,000.00
- Participant and alternate payee are the same age, commence benefits with the same annuity starting date, and are paid in the same benefit form
- MIL adjusted for participant's age and benefit form = \$2,800.00
- MIL adjusted for alternate payee's age and benefit form = \$2,800.00

Absent the QDRO

The guaranteed benefit absent the QDRO is \$2,800.00:

\$3,000.00	(total plan early retirement benefit)
<u>\$2,800.00</u>	(MIL adjusted for age and form)
\$2,800.00	(guaranteed benefit – lesser of the two amounts)

The guaranteed benefit comprises two parts: a guaranteed unsubsidized benefit and a guaranteed subsidy.

- a. The guaranteed unsubsidized benefit is \$2000.00:

\$2,800.00	(guaranteed benefit)
<u>\$2,000.00</u>	(unsubsidized early retirement benefit)
\$2,000.00	(guaranteed unsubsidized benefit – lesser of the two amounts)

- b. The guaranteed subsidy is \$800.00:

\$2,800.00	(guaranteed benefit)
<u>-\$2,000.00</u>	(guaranteed unsubsidized benefit)
\$800.00	(guaranteed subsidy – not less than \$0.00)

The QDRO awarded the alternate payee 50% of the accrued benefit but none of the subsidy. This means that the QDRO awarded the alternate payee 50% of the unsubsidized early retirement benefit and 0% of the subsidy.

Applying the QDRO

The participant's guaranteed benefit after applying the QDRO is \$1800.00:

- a. \$2,000.00 (guaranteed unsubsidized benefit)
 $\times 50\%$ (percent of accrued benefit awarded to participant)
\$1,000.00 (participant's guaranteed unsubsidized benefit)
- b. \$800.00 (guaranteed subsidy)
 $\times 100\%$ (percent of subsidy awarded to participant)
\$800.00 (participant's guaranteed subsidy)
- c. \$1,000.00 (participant's guaranteed unsubsidized benefit)
 $+\$800.00$ (participant's guaranteed subsidy)
\$1,800.00 (participant's guaranteed benefit)

The alternate payee's guaranteed benefit is \$1000.00:

- a. \$2,000.00 (guaranteed unsubsidized benefit)
 $\times 50\%$ (percent of accrued benefit awarded to alternate payee)
\$1,000.00 (alternate payee's guaranteed unsubsidized benefit)
- b. \$800.00 (guaranteed subsidy)
 $\times 0\%$ (percent of subsidy awarded to alternate payee)
\$0.00 (alternate payee's guaranteed subsidy)
- c. \$1,000.00 (alternate payee's guaranteed unsubsidized benefit)
 $+\$0.00$ (alternate payee's subsidy)
\$1,000.00 (alternate payee's guaranteed benefit)

The sum of the guaranteed benefits payable to the participant and alternate payee is \$2,800.00:

\$1,800.00	(participant's guaranteed benefit)
<u>+ \$1,000.00</u>	(alternate payee's guaranteed benefit)
\$2,800.00	(sum of guaranteed benefits)

In this example, the sum of the guaranteed benefits payable to the participant and alternate payee equals the guaranteed benefit absent the QDRO (see above).

Note that, depending on the terms of an individual QDRO as well as on when the participant and alternate payee (1) commence benefits with different annuity starting dates, (2) elect different benefit forms, and/or (3) other Title IV limitations impact the plan benefit, the sum of the monthly guaranteed benefits payable to the participant and alternate payee will not necessarily equal the monthly guaranteed benefit absent the QDRO.