

Appendix E – PBGC Model Treat-As-Spouse QDRO

(You may use this model when a defined benefit pension plan has terminated, PBGC has become trustee of the plan, and PBGC is to treat a spouse or former spouse as the participant's spouse for purposes of a Qualified Preretirement Survivor Annuity or a Qualified Joint-and-Survivor Annuity, or both. **Do not use this model if the alternate payee will receive part of the participant's benefit as a shared payment or separate interest (these models already contain survivor benefit options). This model should be used if the Order's sole intent is to establish an alternate payee's right to a Qualified Preretirement Survivor Annuity, a Qualified Joint-and-Survivor Annuity, or both. You may use this model only if it is submitted to PBGC for qualification before the participant's benefit payments have started. Please read instructions for important information.)**

IN THE _____ COURT OF _____
DIVISION _____ COUNTY _____

-----X
IN RE MARRIAGE/SUPPORT OF :

PETITIONER, :
 :
V. : CASE NO. _____
 :

PARTICIPANT, RESPONDENT. :
 :
 :
-----X

QUALIFIED DOMESTIC RELATIONS ORDER

This Order is intended to be a qualified domestic relations order ("QDRO"), as that term is defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and section 414(p) of the Internal Revenue Code of 1986, as amended ("Code"). This Order is granted in accordance with **[applicable state domestic relations law citations]**, which relate to marital property rights, child support, and/or spousal support between spouses or between a spouse and a former spouse in matrimonial actions.

SECTION 1. IDENTIFICATION OF PLAN

This Order applies to benefits under the **[formal name of plan]** ("Plan"). The Pension Benefit Guaranty Corporation ("PBGC") is trustee of the Plan.

SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE PAYEE(S)

a. **[Name of the Participant]** is eligible to receive a benefit from the Plan and is hereafter referred to as the “Participant.” The Participant’s mailing address is **[address]**. The Participant’s Social Security Number is **[Social Security Number]**.

b. **[Name of the Alternate Payee]** is hereafter referred to as the “Alternate Payee.” The Alternate Payee’s mailing address is **[address]**. The Alternate Payee’s Social Security Number is **[Social Security Number]**. The Alternate Payee is the **[spouse/former spouse]** of the Participant.

SECTION 3. SURVIVING SPOUSE RIGHTS OF ALTERNATE PAYEE

[Include either a., b., or both, as appropriate.]

a. PBGC shall treat the Alternate Payee as the Participant’s spouse for purposes of the Participant’s qualified joint-and-survivor annuity. The survivor annuity payable to the Alternate Payee shall be based on **[all/specify another portion (\$x/x%)]** of the Participant’s benefit.

b. PBGC shall treat the Alternate Payee as the Participant’s spouse for purposes of the Participant’s qualified preretirement survivor annuity. The survivor annuity payable to the Alternate Payee shall be based on **[all/specify another portion (\$x/x%)]** of the Participant’s benefit.

SECTION 4. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

The amount of benefit paid to the Alternate Payee shall be based on the surviving spouse benefits provided to the Alternate Payee under sections 3 and 7.

SECTION 5. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant’s benefit from the benefit payable under the Plan, the Alternate Payee’s survivor annuity shall be based on the Participant’s adjusted benefit.

SECTION 6. BENEFITS START

PBGC shall start payments to the Alternate Payee after the death of the Participant. In the case of a qualified joint-and-survivor annuity, the Alternate Payee's benefit shall start on the first of the month following the month in which the Participant dies. In the case of a qualified preretirement survivor annuity, the Alternate Payee's benefit shall start not earlier than the first of the month following: the Participant's death or, if later, the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10. The Alternate Payee may defer commencement of the qualified preretirement survivor annuity to a date not later than the date specified by Section 401(a)(9) of the Internal Revenue Code. Payment shall not be made until the Alternate Payee submits a PBGC benefit application to PBGC.

SECTION 7. FORM OF BENEFIT

a. If the Alternate Payee is treated as the Participant's spouse for purposes of the Participant's qualified joint-and-survivor annuity under Section 3.a., above, and the Participant dies while receiving payments, PBGC shall pay to the Alternate Payee a straight-life annuity for the Alternate Payee's life unless the Alternate Payee consented in writing to the Participant's waiver of the qualified joint-and-survivor annuity at the Participant's retirement.

b. If the Alternate Payee is treated as the Participant's spouse for purposes of the Participant's qualified preretirement survivor annuity under Section 3.b., above, and the Participant dies prior to receiving benefit payments, the Alternate Payee may elect a straight-life annuity or a certain-and-continuous annuity form offered by PBGC.

SECTION 8. BENEFITS STOP

PBGC shall make payments to the Alternate Payee until the death of the Alternate Payee. If the Alternate Payee elects a certain-and-continuous annuity in the PBGC benefit application for a qualified preretirement survivor annuity, and the Alternate Payee dies before the end of the period certain, any remaining payments shall be made to the Alternate Payee's designated beneficiary.

SECTION 9. DEATH OF PARTICIPANT

[Include either a., b., or both, as appropriate.]

a. If the Participant dies before the Alternate Payee and before the Participant's benefit payments have started, the Alternate Payee shall be eligible for a qualified preretirement survivor annuity whose annuity starting date shall be determined in accordance with section 6.

b. If the Participant dies before the Alternate Payee, but after the Participant's benefit payments have started, the Alternate Payee is eligible to begin receiving survivor benefit payments in accordance with the form of the Participant's benefit and section 3.

SECTION 10. DEATH OF ALTERNATE PAYEE

Under this Order, no benefit will be paid with respect to an Alternate Payee who dies before the Participant. If the Participant's benefit is being paid at the Alternate Payee's death, the Participant's benefit will continue to be paid in the form in which it is being paid.

SECTION 11. OTHER REQUIREMENTS

Nothing in this Order shall require PBGC:

- a. To pay any benefits not permitted under ERISA or the Code;
- b. To provide any type or form of benefit or any option not paid by PBGC with respect to the Plan;
- c. To pay benefits to the Participant and Alternate Payee with a total value that exceeds the value of the benefits the Participant otherwise would receive under Title IV of ERISA;
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another QDRO that is in effect prior to this Order;
- e. To pay benefits to the Alternate Payee for any period before PBGC receives this Order; or

- f. To change the benefit form if the Participant is already receiving benefit payments.

SECTION 12. RESERVATION OF JURISDICTION

The Court reserves jurisdiction to amend this Order to establish or maintain its status as a QDRO under ERISA and the Code.

IT IS SO ORDERED:

Date: _____

JUDGE