



PENSION BENEFIT GUARANTY
CORPORATION

Qualified Domestic Relations Orders & PBGC

This booklet provides general information to attorneys and other pension professionals on submitting domestic relations orders to the Pension Benefit Guaranty Corporation (PBGC) after PBGC becomes trustee of a terminated pension plan. It also provides general information on the procedures PBGC follows to determine whether an order is a qualified domestic relations order (QDRO) for purposes of paying benefits under Title IV of ERISA. Under ERISA §206(d)(3)(G)(ii), each plan must establish reasonable procedures for determining whether an order is a QDRO, but plans may differ in the procedures they establish. **The procedures described in this booklet are PBGC's procedures and may differ from procedures for plans that have not been trusted by PBGC.**

The information summarizes PBGC's rules at the time that the booklet was printed. It is not intended to give legal advice or to replace the advice of an attorney. None of this information takes precedence over legislation, regulations, or specific interpretations or rulings. The model orders and model language are provided solely to assist individuals in preparing orders for submission to PBGC, and they cover only the most common situations that may need to be addressed in a domestic relations order. **PBGC will not condition its determination of whether an order is a QDRO on the use of any particular form or language.**

The information does not represent the government's interpretation of the rules governing QDROs. Interpretation of those rules is within the jurisdiction of the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS).

This booklet may be obtained from PBGC's Web site at www.pbgc.gov or by calling PBGC at 1-800-400-PBGC (7242). (TTY/TDD users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to this number.)

For additional information, DOL's publication *The Division of Pensions through Qualified Domestic Relations Orders* is available at www.dol.gov/ebsa/publications/qdros.html, or by calling the Employee Benefits Security Administration Hotline at 1-866-444-EBSA (3272). IRS Notice 97-11 ("Providing Sample Language for a Qualified Domestic Relations Order") was published January 13, 1997, at 1997-2 I.R.B. 49 and appears in its entirety in Appendix C of DOL's QDRO publication.

This booklet is substantively unchanged from the October 2006 version. One definition has been conformed to a change under the Pension Protection Act of 2006 and several references have been updated.

REQUIRED PAPERWORK REDUCTION ACT NOTICE

Under ERISA, no part of an individual's benefit may be assigned to another person involved in a domestic relations proceeding, such as a separation or divorce, unless PBGC receives a domestic relations order and determines it to be a qualified domestic relations order, or "QDRO." The model QDROs and accompanying guidance in PBGC's booklet, *Qualified Domestic Relations Orders & PBGC*, are intended to assist parties by making it easier to comply with statutory requirements. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0054 (expires 3/31/12). The information provided to PBGC may be disclosable under the Freedom of Information Act and the Privacy Act.

PBGC estimates that the average burden of preparing a QDRO with the assistance of PBGC's booklet will be 3/4 hour of the participant's or alternate payee's time and \$438 to \$900 in professional fees if the participant or alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the participant's or alternate payee's time if they prepare the QDRO without hiring an attorney or other professional. Comments concerning the accuracy of this estimate or suggestions for further reducing this burden may be sent to Pension Benefit Guaranty Corporation, Legislative and Regulatory Department, 1200 K Street NW, Washington, DC 20005-4026.

Contents

		Page
I	Qualified Domestic Relations Orders and PBGC	2
II	PBGC Model QDROs	4
	PBGC Model Separate Interest QDRO	5
	PBGC Model Shared Payment QDRO	9
	PBGC Model QDRO Instructions	13
	Introductory Paragraph	13
	Section 1. Identification of Plan	13
	Section 2. Identification of Participant and Alternate Payee	13
	Section 3. Amount of Benefit to Be Paid to the Alternate Payee	13
	Section 4. PBGC Benefit Adjustments	17
	Section 5. Benefits Start	18
	Section 6. Form of Benefit	19
	Section 7. Benefits Stop	20
	Section 8. Death of Participant	21
	Section 9. Death of Alternate Payee	21
	Section 10. Surviving Spouse Rights of Alternate Payee	22
	Section 11. Other Requirements	24
	Section 12. Reservation of Jurisdiction	24
III	Procedures and Checklist	25
Appendix A	Defined Benefit Pension Plans and PBGC Benefit Rules	31
Appendix B	Domestic Relations Orders Qualified Before PBGC Becomes Trustee	34
Appendix C	QDRO Tax Rules	35
Appendix D	PBGC Model Child Support Shared Payment QDRO	36
Appendix E	PBGC Model Treat-as-Spouse QDRO	41
Appendix F	Language for Including a Contingent Alternate Payee	48
Appendix G	Language for Including Subsidized Early Retirement Benefits in a Separate Interest QDRO	50
Appendix H	How to Obtain Certain Participant Information from PBGC	51
Glossary		52

I Qualified Domestic Relations Orders And PBGC

The Pension Benefit Guaranty Corporation (PBGC) is a federal agency that insures the benefits of about 44 million men and women in more than 30,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays pension benefits, subject to legal limits, to plan participants and beneficiaries. PBGC's rules on benefit amounts and benefit forms payable by PBGC are summarized in Appendix A and can be found in 29 C.F.R. Parts 4000 *et. seq.*

The benefits of a pension plan participant generally may not be assigned or alienated. The law provides an exception for 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 meets specific legal requirements that make it qualified, that is, a qualified domestic relations order, or "QDRO." See 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).

PBGC reviews a domestic relations order that has been submitted to PBGC and must determine that the order is qualified before being able to pay benefits to an alternate payee.

PBGC QDRO Requirements

Identity of the plan participant, each alternate payee, and each pension plan. A QDRO must specify the name and last known mailing address of the plan participant and each alternate payee covered by the order. A QDRO also must identify the name of each plan to which the order applies—this should be the plan's formal name.

Amount to be paid and when payments start. A QDRO must state how much of the plan participant's benefit is to be paid to the alternate payee, such as a dollar amount or percentage of the benefit, or make clear the manner in which the amount is to be determined. A QDRO also must specify or allow the alternate payee to choose when payments to the alternate payee will start.

What happens on the death of the plan participant and the alternate payee. A QDRO should specify whether the alternate payee will be treated as the participant's spouse for purposes of any survivor benefits. A QDRO also should specify what happens to benefits when the alternate payee dies.

What a QDRO Must Not Require

A QDRO must not require PBGC to:

- pay any benefits not permitted under ERISA or the Code;
- provide any type or form of benefit, or any option, not otherwise provided by PBGC;
- pay benefits with a value in excess of the value of benefits that would otherwise be payable by PBGC;
- pay benefits to an alternate payee when those benefits are required to be paid to another alternate payee under an order previously determined to be a QDRO;
- pay benefits to the alternate payee for any period before PBGC receives the order;
- pay benefits as a separate interest to the alternate payee if the participant is already receiving benefit payments; or
- change the benefit form if the participant is already receiving benefit payments.

II PBGC Model QDROs

PBGC has developed two model QDROs for general use after a defined benefit plan has terminated and PBGC has become trustee of the plan: a *PBGC Model Separate Interest QDRO* and a *PBGC Model Shared Payment QDRO*. (Two additional model QDROs that may be used specifically for child support or for providing only a surviving spouse benefit are located in Appendices D and E, respectively.) A QDRO should be clear as to whether the alternate payee is to receive a separate portion of the participant's retirement benefit to be paid at a time and in a form different from that chosen by the participant or a portion of the actual benefit payments made to the participant. PBGC's Model QDROs make this distinction clear.

The *PBGC Model Separate Interest QDRO* may be used only if the participant's benefit payments have not started when the domestic relations order is submitted to PBGC for qualification. The model is intended to be used when an alternate payee wishes to receive pension benefits without regard to when the participant starts payments and without regard to the form of the participant's payments. The participant's benefit is divided into two separate parts—one for the participant and one for the alternate payee. The *PBGC Model Separate Interest QDRO* gives the alternate payee control over the timing and form of his or her benefit

payments. The alternate payee can (1) start his or her payments before the participant (subject to certain restrictions), (2) receive pension benefits over his or her lifetime rather than the participant's lifetime, (3) choose a straight-life annuity or certain-and-continuous (C&C) annuity that may provide benefits to the alternate payee's beneficiary for a limited period, and (4) receive surviving spouse benefits with respect to the participant's remaining separate interest.

With the *PBGC Model Shared Payment QDRO*, the plan participant and the alternate payee "share" each benefit payment. The model may be used regardless of whether the participant has started payments, but the alternate payee cannot start receiving benefits before the participant starts receiving benefits. The *PBGC Model Shared Payment QDRO* must specify the amount or percentage of the participant's benefit payment that is assigned to the alternate payee and the number or duration of payments to the alternate payee. Payments to the alternate payee stop, at the latest, when the participant dies or stops receiving payments. However, the QDRO may also assign the alternate payee a right to survivor benefits or other benefits under the plan.

PBGC Model Separate Interest QDRO

(You may use this model when a defined benefit pension plan has terminated, PBGC has become trustee of the plan, and the parties want PBGC to divide the value of the participant's benefit between the participant and the alternate payee in designated amounts. **You may use this model only if the participant's benefit payments have not started when the order is submitted to PBGC for qualification. 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. The Participant is not currently receiving benefit payments from PBGC with respect to the plan identified below.

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

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/child/other dependent]** of the Participant.

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee as a separate interest an amount actuarially equivalent to **[\$x per month/x%]** of the Participant's benefit under the Plan. The Participant's benefit shall be determined as of **[date of separation/date of divorce/date of plan termination/the date the Alternate Payee elects to begin receiving benefits from the plan/some other date]**. The Alternate Payee's separate interest shall be determined as a benefit payable over the lifetime of the Alternate Payee.

SECTION 4. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant's benefit from the benefit payable under the plan, any reduction shall be applied by decreasing **[pro rata the value of the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining benefit first/the value of the Alternate Payee's separate interest first]**, and any increase shall be applied by increasing **[pro rata the value of the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining accrued benefit/the value of the Alternate Payee's separate interest]**.

SECTION 5. BENEFITS START

Payments to the Alternate Payee shall be payable as of **[such future date as the Alternate Payee elects/a future specified date]**. (This date must be the first day of a month and cannot be before the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10.) Payment shall not be made until PBGC qualifies this domestic relations order and receives a PBGC benefit application from the Alternate Payee.

SECTION 6. FORM OF BENEFIT

PBGC shall pay the Alternate Payee's benefit in the form elected by the Alternate Payee on the PBGC benefit application.

SECTION 7. BENEFITS STOP

PBGC shall stop payments of the Alternate Payee's separate interest in accordance with the form of benefit elected by the Alternate Payee.

SECTION 8. DEATH OF PARTICIPANT

The Participant's death shall not affect payments under the Alternate Payee's separate interest.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before commencing benefits, the separate interest shall **[revert to the Participant/be forfeited to PBGC/be paid to the Contingent Alternate Payee (see Appendix F for substitute model language if a contingent alternate payee is named)]**. If the Alternate Payee dies after commencing benefits, see section 7.

SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE PAYEE

[Note: Section 10 applies only if the Alternate Payee is the spouse or former spouse of the Participant.]

a. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified joint-and-survivor annuity resulting from the benefit in which the Participant retains a separate interest. If the word "shall" was selected in the preceding sentence, the qualified joint-and-survivor annuity payable to the Alternate Payee shall be based on **[all/specify another portion (\$x/x%)]** of the benefit in which the Participant retains a separate interest.

b. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified preretirement survivor annuity resulting from the benefit in which the Participant retains a separate interest. If the word "shall" was selected in the preceding sentence, the qualified preretirement survivor annuity payable to the Alternate Payee

shall be based on [all/specify another portion (\$x/x%)] of the benefit in which the Participant retains a separate interest.

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;
- f. To pay benefits as a separate interest to the Alternate Payee if the Participant already is receiving benefit payments; or
- g. 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

PBGC Model Shared Payment 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 pay the alternate payee a portion of the participant's monthly benefit payments.

You may use this model either before or after the participant's benefit payments have started; however, benefit payments to the alternate payee cannot start until 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

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/child/other dependent]** of the Participant.

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

a. Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee **[\$x/x%]** of each of the Participant's monthly benefit payments.

b. **OPTIONAL:** When **[insert future event]** occurs and PBGC is notified in writing, PBGC shall **[increase/decrease]** the amount paid to the Alternate Payee from each of the Participant's monthly benefit payments to **[\$x/x%]**.

SECTION 4. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant's benefit from the benefit payable under the Plan, any reduction shall be applied by decreasing **[pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit first/the Alternate Payee's benefit first]**, and any increase shall be applied by increasing **[pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit/the Alternate Payee's benefit]**.

SECTION 5. BENEFITS START

Payments to the Alternate Payee shall be payable as of **[such future date as the Alternate Payee elects/a future specified date/the date when PBGC starts payments to the Participant]**. (This date must be the first day of a month and cannot be before the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10.) Payment shall not be made until PBGC qualifies this domestic relations order and receives a PBGC benefit application from the Alternate Payee. Payments to the Alternate Payee shall not start earlier than the date the Participant starts payments.

SECTION 6. FORM OF BENEFIT

The Alternate Payee shall not have the right to elect a form of benefit. The amount paid to the Alternate Payee will be determined by the benefit form elected by the Participant.

SECTION 7. BENEFITS STOP

Except for any survivor benefits described in section 10, PBGC shall make payments to the Alternate Payee until the **[earlier of the Participant's or Alternate Payee's death/earlier of: the Participant's or Alternate Payee's death, a specific date, or the date PBGC is notified in writing of the occurrence of [insert specific event]]**.

SECTION 8. DEATH OF PARTICIPANT

Except for any survivor benefits described in section 10, if the Participant dies before the Alternate Payee, the Alternate Payee is not entitled to any payments as of the first of the month following the Participant's death.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee and, if applicable, the Contingent Alternate Payee, dies before the Participant, PBGC shall return the Participant's monthly benefit payments to the amount that the Participant would be receiving had there been no Order. **(See Appendix F for substitute model language if a contingent alternate payee is named.)**

SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE PAYEE

[Note: Section 10 applies only if benefit payments to the Participant have not started and the Alternate Payee is the spouse or former spouse of the Participant.]

a. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified joint-and-survivor annuity. If the word "shall" was selected in the preceding sentence, the qualified joint-and-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/shall not**] treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified preretirement survivor annuity. If the word "shall" was selected in the preceding sentence, the qualified preretirement survivor annuity payable to the Alternate Payee shall be based on [**all/specify another portion (\$x/x%)**] of the Participant's benefit.

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 in excess of 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

PBGC Model QDRO Instructions

The following information on completing the *PBGC Model Separate Interest QDRO* and *Model Shared Payment QDRO* discusses each provision separately, but all of the provisions work together. The time that benefit payments start and stop can affect the amount of benefits the participant and the alternate payee will receive. Similarly, the form of benefit payments—whether benefits are paid as a straight-life annuity or an annuity with survivor benefits—can affect the amount of benefits the parties will receive.

The models are drafted assuming one plan and one alternate payee. If the domestic relations order (Order) is intended to cover more than one PBGC-trusted plan or more than one alternate payee, the Order should be clear as to which plan and alternate payee each provision is addressing. The preferred way of doing this is to repeat sections 1 through 10 as necessary for each plan.

Introductory Paragraph

Insert the applicable state domestic relations law citations.

Section 1. Identification of Plan

Insert the formal name of the plan covered by this Order (i.e., the full name as stated in plan documents).

Section 2. Identification of Participant and Alternate Payee

(a) *Insert the name, mailing address, and Social Security Number of the participant.*

(b) *Insert the name, mailing address, and Social Security Number of the alternate payee. Specify the relationship (spouse/former spouse/child/other dependent) of the alternate payee to the participant.*

The Order should be clear on the identity of the participant and the alternate payee. If an alternate payee is a minor or legally incompetent, the Order must include the name and address of the guardian, other legal representative, or state

agency to whom PBGC will send payments on behalf of the minor or legally incompetent person (see language in section 2.b. of the *PBGC Model Child Support Shared Payment QDRO* – Appendix D).

Section 3. Amount of Benefit to Be Paid to Alternate Payee

Insert the flat-dollar amount or percentage of the participant's benefit that the alternate payee is to receive. Also insert the date as of which the benefit is to be determined, if applicable.

The Order must specify how much of the participant's benefit the alternate payee will receive. Because the participant often does not know the specific amount that will be paid at retirement, this can be difficult for the Order to address and for PBGC to interpret. The assistance of an actuary may be helpful in making these complex determinations. Information about the participant's benefit under a plan trusted by PBGC may be obtained by a prospective alternate payee (or his or her guardian) by

requesting this information from PBGC (see Appendix H – How to Obtain Certain Participant Information from PBGC).

PBGC has found there is less confusion with an Order that states a specific percentage or amount, and the models are drafted with that approach. If, instead, the parties choose to include a formula, PBGC will treat the domestic relations order as qualified only if we can determine the benefit under the formula based on the information in the Order. The Order must include any information that would be necessary to determine the benefit amount and, where applicable, the period during which it is to be paid (for example, a child's birth date if the benefit stops when the child attains a certain age).

The *PBGC Model Separate Interest QDRO* provides that the alternate payee will receive a benefit “actuarially equivalent” in value to a specified portion of the participant's benefit. PBGC will determine the amount of the alternate payee's monthly benefit taking into account the plan's early retirement factors (if applicable) and the ages of the participant and alternate payee at the time the alternate payee's benefit payments begin. PBGC's actuarial factors will be used to adjust for the difference in ages of the participant and alternate payee and the form elected by the alternate payee.

The *PBGC Model Shared Payment QDRO* provides that the alternate payee will receive a portion of each of the participant's benefit payments on or after the date the

participant starts benefit payments. It allows the alternate payee's portion to increase or decrease at a specified time or upon a specified event. The Order must specify the amount and timing of any change.

Neither type of Order can provide for payments to the alternate payee to be payable as of a date before PBGC receives the domestic relations order, but the Shared Payment QDRO can increase the monthly payment amount to the alternate payee (and decrease the monthly payment to the participant by the same amount) for a specified period.

There are many ways an Order can specify the portion or value of a benefit or pension payment that the alternate payee is to receive under the Order. An Order can specify a dollar amount or a percentage or provide a formula for determining the amount or percentage. The dollar amount or percentage can be based on the participant's entire benefit or payment, or just on the part of the benefit or payment earned during the marriage or up to a specified date.

The *PBGC Model Separate Interest QDRO* provides that the alternate payee is to receive a benefit that is the actuarial equivalent of a specific portion of the benefit that the participant has earned as of a given date, expressed either as a dollar amount or a percentage of the participant's benefit (for example, the actuarial equivalent of \$1,000 per month of the participant's benefit, or

the actuarial equivalent of 50% of the participant's monthly benefit). In a Separate Interest QDRO, the sum of the values of the participant's portion and the alternate payee's portion cannot exceed the total value of the benefit PBGC would have paid the participant assuming there was no Order (see Section 4 – PBGC Benefit Adjustments).

The Separate Interest QDRO must specify the date as of which the alternate payee's portion of the participant's benefit is to be determined. Typically, for domestic relations orders issued after PBGC trustees a plan, the division of benefits is based on the participant's benefit as of the date: of marital separation, of divorce, the alternate payee elects to begin receiving benefits from the plan, or of plan termination (in plans trusted by PBGC, all benefit accruals will have ceased no later than the date the plan terminated). The choice of the determination date (for example, at the date of marital separation or divorce) can have a significant effect on the benefit amount assigned to the alternate payee and the benefit amount retained by the participant.

Example 1 - Separate Interest QDRO. Carol is the plan participant and is age 40; Mark is age 35. Their QDRO provides that Mark will receive a separate interest that is actuarially equivalent to 50% of Carol's pension benefit. Carol's benefit in the form of a straight-life annuity with payments beginning at her

age 65 is \$600 per month. Mark's 50% interest in Carol's benefit has a value that is actuarially equivalent to a life annuity of \$300 ($\$600 \times 50\%$) per month to Carol beginning at her age 65.

Mark is younger than Carol, so a benefit of \$300 per month to Carol at age 65 generally will provide a different monthly benefit for Mark regardless of when he starts. Mark's actual monthly life annuity payments will depend on his age when he starts benefit payments, PBGC's actuarial factors, and the benefit form he elects.

Most pension plans provide for “normal retirement” at age 65 (or, if later, the fifth anniversary of the date the participant commenced participation under the plan). Many plans allow “early retirement” at some younger age, often in combination with a specified amount of service with the employer—for example, at age 60 with at least 20 years of service. Some plans actuarially reduce the early retirement benefit to reflect the longer payout—for example, if the benefit would be \$1,000 per month starting at age 65, it might be reduced to \$650 per month starting at age 60.

Other plans may not reduce the benefit at all—for example, paying the same \$1,000 per month starting at age 60 as the participant would receive starting at age 65. This kind of early retirement benefit is referred to as a “subsidized” early retirement

benefit, because the participant's benefit is not reduced even though it will cost the plan more due to the earlier starting date. (The benefit would be considered "partially subsidized" if the benefit were reduced, but not as much as would be necessary to make it equal in value to the benefit that would be paid starting at age 65.)

An Order may be written so as to provide (or not provide) the alternate payee with all or part of the value of a subsidized early retirement benefit. If the participant has not commenced receiving the subsidized benefit by the time an alternate payee has elected to commence benefits under a Separate Interest QDRO, the alternate payee cannot receive a portion of the subsidized early retirement benefit when his or her benefit commences. However, the Order may provide that if and when the participant begins receiving a subsidized early retirement benefit a portion of the early retirement subsidy will be provided to the alternate payee.

NOTE: if the Order is silent with respect to whether the alternate payee is to receive any portion of the subsidized early retirement benefit, PBGC will pay the entire subsidy to the participant. (See Appendix G.) Under the *PBGC Model Shared Payment QDRO*, if the alternate payee receives a percentage share of the participant's benefit, the alternate payee's benefit will automatically include a portion of the early retirement subsidy if the participant retires early.

The *PBGC Model Shared Payment QDRO* provides that a specific amount or a percentage of each of the participant's monthly benefit payments is paid directly to the alternate payee (for example, \$400 per month, or 25% of each monthly benefit payment). The combined benefit payments to the participant and the alternate payee under a Shared Payment QDRO equal the benefit that would be paid to the participant assuming there was no QDRO.

Example 2 - Shared Payment QDRO. A QDRO provides Dick's former spouse, Jane, with 25% of each of his monthly pension payments once his payments start. Dick begins receiving his benefits at age 65, and his monthly payments are \$900 per month in the form of a straight-life annuity. Jane's portion of Dick's payment will be \$225 per month ($\$900 \times 25\% = \225). Under the QDRO, Jane will receive \$225 per month for Dick's lifetime and Dick will receive \$675 per month ($\$900 - \225).

In calculating the amount or percentage to be given to the alternate payee under a QDRO, the parties frequently will take into account the portion of the participant's benefit that was earned during the time the alternate payee and the participant were married. Under this method, the alternate payee's portion of the participant's benefit (for example, 50%) would be multiplied by a fraction, the numerator of which is the number of years and months that the participant earned benefits under the plan during the parties' marriage, and the

denominator of which is the total number of years and months that the participant earned benefits under the plan. This method of allocating the benefit is sometimes referred to as the marital portion or marital fraction method, and it can be used for both shared payment and separate interest QDROs.

Example 3 - Marital Fraction Method (Separate Interest QDRO).

Continuing with Example 1, assume Carol earned benefits under the plan for 10 years and was married to Mark for 5 of those years. If their QDRO applied the marital fraction method to Mark's 50% separate interest, Mark's 50% interest would be multiplied by the marital fraction of 5/10. Thus, Mark's pension would be actuarially equivalent to the value of a straight-life annuity of \$150 ($\$600 \times 50\% \times 5/10$) per month payable to Carol beginning at her age 65. (If Mark and Carol had been married 12 years, and Carol had earned benefits for 10 of those years, the marriage fraction would have been 10/10, or 1. Mark would receive a benefit actuarially equivalent to 50% of Carol's benefit.)

Section 4. PBGC Benefit Adjustments

Insert the method for allocating any adjustments PBGC makes in benefits. Because the parties may wish to handle benefit increases and decreases differently, the models include separate sentences for each.

After trusteeing a plan, PBGC may reduce benefits as necessary to meet the limitations established by ERISA (see Appendix A). PBGC pays estimated benefits until it has completed its work on the plan and determined final benefits. In some cases—especially in plans with benefits that exceed PBGC guarantee limits or that have complex benefit structures—final benefit amounts will differ from the estimated payment amounts paid by PBGC.

In general, if a QDRO awards a fixed percentage of the participant's benefit payment to the alternate payee and provides no guidance on apportioning between the participant and alternate payee any benefit adjustments made by PBGC, PBGC will adjust their benefits pro rata. If a QDRO awards a fixed-dollar amount of the participant's benefit to the alternate payee with no additional guidance, PBGC will first increase or decrease the participant's benefit to reflect PBGC's adjustment. PBGC will not adjust the fixed-dollar amount awarded to the alternate payee for an increase, and will reduce the alternate payee's fixed-dollar amount only if the total decrease to be made exceeds the participant's benefit.

If PBGC's estimated payments were too low, PBGC will pay the difference (plus interest) in a single payment to the participant, alternate payee, or both, as applicable. If the estimated payments were too high, PBGC will actuarially reduce monthly benefit payments (generally by no

more than 10%) to the participant and alternate payee to recoup any overpayment gradually. The benefit reduction will end when the amount of the overpayment is recouped.

Section 5. Benefits Start

*Indicate the date as of which the alternate payee's benefit payments should begin. The models allow for benefits to begin as of a specific future date, or a future date elected by the alternate payee. The alternate payee's benefit start date will depend in part on the participant's "earliest PBGC retirement date" (if the separate interest model is used) and whether the participant has begun payment at the time the order is submitted to PBGC for qualification (if the shared payment model is used). The PBGC Model Separate Interest QDRO may **not** be used if the participant already is receiving benefit payments. The PBGC Model Shared Payment QDRO does not allow the alternate payee's payments to begin until the participant starts receiving payments.*

The PBGC Model Separate Interest QDRO permits the alternate payee to specify a future date that his or her benefit payments will start or to choose a starting date at some later time. The Order can be written to allow the alternate payee to begin receiving payments independently of when the participant begins receiving benefits, but payments to the alternate payee may **not** begin before the participant's "earliest PBGC retirement date." Payments to the alternate payee must begin no later than the

date the participant is required to begin payments under section 401(a)(9) of the Code (see Appendix C). The alternate payee's benefit will be actuarially adjusted to reflect the alternate payee's age at commencement and also for form of benefit (see pp. 14 and 19).

The "earliest PBGC retirement date" has a specific meaning for PBGC purposes and is defined in PBGC regulation 29 C.F.R. §4022.10. Typically, a participant's age as of his or her "earliest PBGC retirement date" (EPRD) will be 55 unless (1) under the plan's terms, the participant cannot receive a benefit until a later age, or (2) PBGC determines under a facts-and-circumstances test that the participant could retire earlier than 55. PBGC tells each participant what his or her EPRD is in a benefit determination.

***Example 4.** Continuing with **Example 1**, the **Separate Interest QDRO** allows Mark to start his benefit payments without regard to when Carol's benefit payments actually start. For example, Mark may want to begin receiving benefit payments as early as age 50, which is when Carol would be 55 years old. (Assume Carol's "earliest PBGC retirement date" is 55. If Carol's EPRD were instead 60, Mark couldn't start receiving benefits until he was 55.) If Mark and Carol had used a **Shared Payment QDRO** and Carol did not begin receiving benefits until age 65 (normal retirement age under the plan), Mark would not be able to begin receiving benefit payments until Carol did.*

The *PBGC Model Shared Payment QDRO* provides the alternate payee with a portion of the participant's benefit payments during the period that the participant receives benefits. If the participant is already receiving benefit payments, the alternate payee under the QDRO may begin receiving benefits once PBGC qualifies the order and the alternate payee submits a benefit application. (In general, benefits would be payable retroactive to the date the original signed order or a certified or authenticated copy was received by PBGC unless a later date was provided for in the QDRO.) If the participant has not begun receiving benefit payments, the alternate payee may not begin receiving payments until the participant does.

Example 5. Continuing with Example 2, PBGC will not begin paying benefits to Jane under the Shared Payment QDRO until the time that Dick begins receiving his benefit payments.

Section 6. Form of Benefit

Generally, if an Order is issued after PBGC becomes trustee of a plan, the forms that PBGC will allow the alternate payee to choose pursuant to the *PBGC Model Separate Interest QDRO* are a straight-life annuity for the life of the alternate payee or a certain-and-continuous (C&C) annuity with a 5-year, 10-year, or 15-year period certain. A straight-life annuity pays benefits only for the lifetime of the alternate payee; no payments are made after the alternate payee dies. A C&C annuity

guarantees payments for the longer of the alternate payee's life or the period certain that is selected. If the alternate payee dies before the end of the period certain, payments are made to his or her beneficiary for the rest of the period certain. If the alternate payee dies after the end of the period certain, no further payments are made. **NOTE:** Because benefits under a C&C annuity are guaranteed to be paid for at least the period certain, monthly payments under a C&C annuity will be less than they would be if the alternate payee had selected a straight-life annuity.

The alternate payee selects his or her form of benefit when applying to PBGC for benefits. If the alternate payee selects a C&C annuity, the alternate payee must designate a beneficiary who will receive the remaining payments if the alternate payee dies while receiving payments, but prior to the end of the period certain. **Parties or their representatives should contact PBGC before providing for any other benefit form in an Order to make certain it is a form that PBGC pays.**

Example 6. Continuing with Example 1, the Separate Interest QDRO will allow Mark to apply to PBGC to receive benefits as a straight-life annuity or a C&C annuity. As explained above, the amount of Mark's monthly benefit is actuarially adjusted to reflect his life expectancy at the date payments begin. In addition, the amount of his monthly benefit is affected by the benefit form he selects. No matter what benefit form he

selects, his benefit must have the same value as a \$300-per-month benefit payable to Carol over her lifetime beginning at her age 65. If Mark chooses a straight-life annuity, no further payments will be made after Mark dies. If he chooses to receive a C&C annuity, an annuity that guarantees benefits for the longer of his life or the period certain, his monthly benefit will be less. If Mark chooses a 10-year C&C annuity and dies after seven years, his designated beneficiary will receive three years of payments in the same amount Mark had been receiving.

In the PBGC Model Shared Payment QDRO, if the participant is receiving benefit payments, the Order cannot change the form of benefit payments elected by the participant. However, if the participant is not yet receiving payments, the Shared Payment QDRO (like the Separate Interest QDRO) can provide surviving spouse benefits and thus affect the form of benefit payment that the participant can elect. For example, section 10 of either model QDRO can provide that the participant's former spouse, as the alternate payee, will be treated as the participant's surviving spouse based on all or a portion of the participant's benefit. If the Order so provides, then for the portion of the benefit for which the alternate payee is treated as the spouse, the participant cannot choose a form of benefit other than a qualified joint-and-survivor annuity with the former spouse as the beneficiary without the

former spouse's consent at the time the pension is to begin. If under the Shared Payment QDRO the participant is receiving a C&C annuity and the participant dies during the certain period, payments to the alternate payee end unless the alternate payee is the named beneficiary to receive benefits under the certain period.

Example 7. Continuing with the Shared Payment QDRO in Example 2, PBGC will begin paying Jane's portion of Dick's benefit no earlier than the time that Dick begins receiving his benefit payments. If the QDRO gives Jane surviving-spouse rights, Dick must elect a qualified joint-and-survivor annuity with Jane as beneficiary, unless Jane consents to Dick's waiver of the qualified joint-and-survivor annuity. If the QDRO does not give Jane surviving-spouse rights, Dick can elect any form of payment provided to participants by PBGC.

Section 7. Benefits Stop

The time when benefits stop for the alternate payee generally is governed by the form elected in the PBGC benefit application.

Once benefit payments to the participant or the alternate payee have started, the form of benefit will govern when benefits stop. Under the PBGC Model Shared Payment QDRO, payments to an alternate payee will stop on the earliest of the (1) death of the participant, (2) the death of the alternate payee, or (3) the occurrence of a specified date or event, such

as the remarriage of the alternate payee or the date a child attains a certain age.

Parties must notify PBGC's Customer Contact Center (1-800-400-7242) when an event occurs that affects the benefit.

Under the *PBGC Model Separate Interest QDRO*, payments to an alternate payee stop upon the death of the alternate payee. If the alternate payee elected a benefit form under which a designated beneficiary could be paid (for example, a C&C annuity), the form of benefit will govern whether the beneficiary will be paid and for how long.

Section 8. Death of Participant

Indicate what happens to payments when the participant dies.

The *PBGC Model Separate Interest QDRO* provides that PBGC will pay the separate interest to the alternate payee regardless of when the participant dies. (The alternate payee will receive additional monthly payment amounts to the extent the alternate payee is to be treated as the surviving spouse under section 10.)

The *PBGC Model Shared Payment QDRO* provides that payment of a benefit, if any, to an alternate payee stops no later than the death of the participant (except to the extent that the alternate payee is to be treated as the surviving spouse under section 10 or the alternate payee is a named beneficiary under a C&C annuity).

Example 8. Continuing with the Shared Payment QDRO in Example 2, suppose

that Dick retires and begins receiving his pension benefits as a 10-year certain-and-continuous (C&C) annuity rather than a straight-life annuity. Dick and Jane's child is the designated beneficiary of Dick's C&C annuity. Jane receives a 25% share of Dick's benefit payments. Two years after commencing benefit payments, Dick dies. Dick's benefit payments to Jane stop upon Dick's death. However, payments to their child, the designated beneficiary, would then commence equal to 100% of Dick's benefit payment and continue until the end of the 10-year period certain.

Section 9. Death of Alternate Payee

Indicate what happens when the alternate payee dies.

In the *PBGC Model Separate Interest QDRO*, if the QDRO is silent on what happens if the alternate payee dies before receiving benefit payments, PBGC will treat the separate interest as being forfeited to PBGC. However, the QDRO could provide for a contingent alternate payee (such as the participant's child or other dependent) to receive a benefit equal in value to the alternate payee's separate interest if the alternate payee dies before commencing benefits. (See Appendix F for substitute model language if a contingent alternate payee is named.) The QDRO also could provide that, if the alternate payee (and any designated contingent alternate payee) dies before commencing benefits, the value of the separate interest returns to the participant. The Separate Interest QDRO

cannot provide for the benefit to go to an alternate payee's (or contingent alternate payee's) spouse or estate.

If benefits to the alternate payee have started, the form chosen governs—there are no further benefits if the alternate payee chose a straight-life annuity, but if the alternate payee elected a C&C annuity and died before the end of the period certain, the payments for the remainder of the period certain will be paid to the alternate payee's designated beneficiary.

The *PBGC Model Shared Payment QDRO* addresses what happens to the alternate payee's benefit if the alternate payee dies before the participant dies (whether or not benefit payments have started to the alternate payee). If the alternate payee dies before the participant, unless the QDRO states otherwise, the participant's monthly benefit payments will be returned to the amount that the participant would be receiving assuming there was no QDRO. The alternate payee cannot pass payments on to another beneficiary upon death unless the beneficiary is designated in the Order as a Contingent Alternate Payee. However, as with the Separate Interest QDRO, the Shared Payment QDRO could be drafted to cover multiple or contingent alternate payees, such as payments to the participant's former spouse and then, upon the former spouse's death, to the participant's dependent children as contingent alternate payees. (See Appendix F for substitute model language if a contingent alternate payee is named.)

Example 9. Continuing with the Shared Payment QDRO in Example 2, Dick retires and begins receiving his pension benefits as a joint-and-survivor annuity. Jane receives a 25% share of Dick's benefit payments. Two years after commencing benefit payments, Jane dies. Because their QDRO did not name a contingent alternate payee, Jane's portion of Dick's benefit payments reverts to Dick at Jane's death.

Section 10. Surviving-Spouse Rights of Alternate Payee

*This section applies only if the alternate payee is the spouse or former spouse of the participant. Indicate whether the alternate payee will be treated as the spouse of the participant for purposes of part or all of the qualified preretirement survivor annuity and/or the qualified joint-and-survivor annuity, and, if so, indicate "all" or specify the spouse's portion. If the alternate payee is to receive **only** a qualified preretirement survivor annuity and/or qualified joint-and-survivor annuity (that is, the alternate payee will **not** receive a separate interest or shared payment benefit), see the *PBGC Model Treat-As-Spouse QDRO* in Appendix E.*

In general, if a participant dies before starting benefit payments, PBGC pays the participant's surviving spouse a qualified preretirement survivor annuity (QPSA). The surviving spouse can elect to take the QPSA in the form of a straight-life annuity or certain-and-continuous annuity. If a

participant dies after starting benefit payments in the form of a qualified joint-and-survivor annuity (QJSA), PBGC pays the participant's surviving spouse the survivor portion of the QJSA.

Under either model QDRO, the participant's former spouse, as the alternate payee, can be treated as the surviving spouse (even if the participant has remarried) for all or a portion of the pre- or post-retirement survivor benefit of a participant who has not yet begun to receive payments. Thus, the alternate payee can be designated as the surviving spouse for all or part of the QPSA and/or the QJSA with respect to either the participant's benefit or the portion of the benefit in which the participant retains a separate interest. (Where a QJSA applies, the participant cannot elect a form of benefit other than a survivor annuity with the former spouse as beneficiary unless the former spouse consents to a different benefit form at the time the pension is to begin.) These survivor benefits can be in addition to a separate interest or shared payment the alternate payee also has a right to receive. PBGC will pay survivor benefits in accordance with the terms of the QDRO even if the participant has designated a different beneficiary or has remarried, as long as the domestic relations order was submitted before the earlier of the time the participant had died or retired.

Example 10. Continuing with the Separate Interest QDRO in Example 1, Carol dies at age 41. Mark's separate interest in Carol's pension benefit is unaffected by her death, but PBGC will not pay benefits to him before Carol would have reached her "earliest PBGC retirement date." Also, if the QDRO is silent as to survivor benefits, because Carol and Mark were not married at the time of Carol's death, Mark is not treated as Carol's spouse and will not receive a QPSA.

Example 11. Continuing with the Shared Payment QDRO in Example 2, assume the QDRO provides that Jane will be treated as Dick's spouse for purposes of survivor benefits. When Dick retires, he elects a qualified joint-and-50%-survivor annuity, which reduces his monthly benefit from \$900 to \$820. Based on the terms of their Shared Payment QDRO, Jane receives 25% of the monthly benefit payable during Dick's life, or \$205. Three years after starting benefit payments, Dick dies. Under the terms of their QDRO, Jane's 25% portion of Dick's benefit payments stops at Dick's death. However, Jane will receive a survivor annuity (that is, a monthly benefit for her lifetime) equal to 50% of Dick's annuity benefit, or \$410.

In rare cases, a pension plan provides for survivor benefits in addition to those required by ERISA (for example, a steel plan’s “Free-Surviving-Spouse Benefit”). In order for part or all of such benefits to be paid to an alternate payee (rather than to the person who otherwise would be entitled to receive such death benefits under the plan, for example, a second spouse), the QDRO must specifically provide for payment of the benefits to the alternate payee.

Section 11. Other Requirements

The provisions in this section should be in all Orders submitted to PBGC, and the parties’ attorneys or representatives should ensure that the provisions are met.

Section 12. Reservation of Jurisdiction

Include the necessary language for the court issuing the domestic relations order to retain jurisdiction over the Order.

III Procedures and Checklist

Planning for a QDRO

Plan ahead and allow sufficient time at each stage of the process. Failure to do so may preclude certain benefit options for the alternate payee. For example, if PBGC does not receive an original signed domestic relations order (or a copy certified or otherwise authenticated under state domestic relations procedures) until after the participant is in pay status, the alternate payee may not be able to have a separate interest order or an order providing for a survivor benefit for the alternate payee approved as a QDRO by PBGC.

Submission to PBGC

To submit an original signed order or a certified or authenticated copy to PBGC, send it to the PBGC QDRO Coordinator, P.O. Box 151750, Alexandria, VA 22315-1750. Because PBGC needs an original signed order or a certified or authenticated copy, the order cannot be submitted electronically to PBGC.

PBGC Review of Orders and the Suspension of Benefits During Its Review

PBGC will review an original signed order or a certified or authenticated copy to determine whether the order is qualified, and will inform the interested parties in writing of its determination. Interested

parties include all parties named in the order, their attorneys (if identified), and any representative designated in writing by the parties.

If PBGC determines the order is not a QDRO, PBGC will explain the reason(s) along with its procedures for appealing the determination. An appeal, or a request for an extension of time to appeal, must be filed within 45 days after the date of PBGC's determination. While PBGC is reviewing the order to determine whether the order is qualified, PBGC will suspend payment to the participant of any amounts that the domestic relations order would give to the alternate payee.

If PBGC determines that the order is qualified, PBGC will begin making payments (including any suspended payments) to the alternate payee under the QDRO after the 45-day period for filing an appeal has elapsed and the alternate payee has submitted a benefit application. If an appeal is filed, or a suit is filed in court, PBGC will continue to suspend payment of the benefits in controversy until the appeal or suit is resolved.

If PBGC determines that the order is not qualified, PBGC will lift the suspension and make any back payments to the participant as soon as the 45-day period for filing an appeal has elapsed. However, the

suspension of payments will continue if, within 45 days of PBGC's determination: (1) an appeal is filed or (2) either party notifies PBGC in writing that they are making the necessary changes in the domestic relations order and they submit a revised original signed order or a certified or authenticated copy within 60 days of notifying PBGC. If an appeal is filed and PBGC determines on appeal that the order is not qualified, PBGC will grant both parties 60 days to submit a revised original signed order or a certified or authenticated copy. If the participant or alternate payee provides a copy of a court scheduling order, or a written statement by the participant or alternate payee (or the participant's or alternate payee's attorney or representative), to the effect that the court will not review the proposed domestic relations order until after the 60-day period has ended, PBGC will grant an extension of the 60-day period based on the facts and circumstances.

In no case will PBGC suspend payments for more than 18 months from the date the first payment to the alternate payee would have been due under the order. PBGC will pay suspended benefits with interest.

Draft Domestic Relations Orders

At the request of a participant or an alternate payee (or an attorney or a representative of either), PBGC will informally review a domestic relations order in draft form to determine if it would satisfy qualification requirements if

To submit a domestic relations order to PBGC (or a draft order for a preliminary, informal review), send it to the PBGC QDRO Coordinator, P.O. Box 151750, Alexandria, VA 22315-1750.

submitted as an original signed order or a certified or authenticated copy. (For instructions on how to submit a draft order electronically, contact PBGC's Customer Contact Center at 1-800-400-7242.)

PBGC will acknowledge receipt of a draft domestic relations order in writing. For a participant who is not yet in pay status but is eligible to receive benefits and has applied for benefits, PBGC will delay the commencement of any benefits for a period of up to 60 days from the date that PBGC notifies the parties of the results of its informal review. For a participant who is in pay status, PBGC will suspend payment to the participant of any amounts that PBGC determines the draft domestic relations order would give to the alternate payee for a period of up to 60 days from the date that PBGC notifies the parties of the results of its informal review.

If an original signed order or a certified or authenticated copy is received by PBGC within the 60-day period, PBGC will review the order and continue to suspend benefits in accordance with the procedures described in "PBGC Review of Orders and the Suspension of Benefits During Its Review," which appears earlier in this section. If an original signed order or a

certified or authenticated copy is not received by PBGC within the 60-day period, PBGC will put the participant in pay status (in the case of a participant who is not yet in pay status) or release to the participant any amounts withheld (in the case of a participant who is in pay status), unless by the end of the 60-day period PBGC receives a copy of a court scheduling order, or a written statement by the participant or alternate payee (or the participant's or alternate payee's attorney or representative), to the effect that the court will not review the proposed domestic relations order until after the 60-day period has ended. In that case, PBGC will grant an extension of the 60-day period based on the facts and circumstances.

If PBGC puts the participant in pay status, the alternate payee will not be able to have a separate interest order or an order providing for a survivor benefit for the alternate payee approved as a QDRO by PBGC.

Multiple Final Orders

After PBGC has qualified an order, a second order sometimes will be submitted attempting to modify the first order. When this occurs, PBGC will suspend benefit payments that would be affected by the new order. If PBGC qualifies the second order, changes in benefit payments will be made prospectively only from the date of submission of the second order. If PBGC does not qualify the second order, see

“PBGC Review of Orders and the Suspension of Benefits During Its Review,” above, for appeal rights and/or resubmitting a revised order to PBGC. PBGC will not apply retroactively the terms of a domestic relations order.

Change of Address or Entitlement Status

PBGC should be notified promptly of any change in address. The parties also should notify PBGC immediately if an event occurs that affects benefits PBGC is paying or will pay. For example, if payments to the alternate payee would end on a future event, such as remarriage or a child's reaching a certain age, the parties should immediately notify PBGC in writing when the event occurs. To notify PBGC about a change in address or of an event that affects benefits, contact PBGC's Customer Contact Center at 1-800-400-7242.

Checklist

PBGC suggests using the following checklist when drafting a domestic relations order that will be sent to PBGC:

- ✓ **Does the order clearly specify the PBGC-trusted pension plan to which it applies?**
 - Does the order clearly identify the defined benefit pension plan (for example, formal plan name)?
 - Is the plan trusted by PBGC?

✓ **Does the order include the names of the persons to whom it applies?**

- ❑ Does the order clearly identify the participant by providing full name, last known mailing address, and Social Security Number?
- ❑ Does the order clearly identify each alternate payee (and, if applicable, each contingent alternate payee) by providing full name, last known mailing address, and Social Security Number?
- ❑ Does the order clearly identify each alternate payee (and, if applicable, contingent alternate payee) as a spouse, former spouse, child, or other dependent of the participant?
- ❑ Does the order provide the name and address of the guardian, legal representative, or state agency to whom PBGC will send payments on behalf of an alternate payee (and, if applicable, a contingent alternate payee) who is a minor or legally incompetent?

✓ **Does the order specify the amount to be paid to each alternate payee and the length of time such payments will be made?**

- ❑ Does the order clearly specify the amount or percentage (or state how to determine the amount or percentage) of the participant's monthly benefit payment to be paid to each alternate payee?

- ❑ Does the order clearly specify (or allow a future election that would specify) when payments will start for each alternate payee?
- ❑ Does the order clearly require payment to the alternate payee from PBGC (rather than, for example, to the participant for payment to the alternate payee)?

✓ **Does the order specify what happens when the participant dies?**

- ❑ Does the order specify that **shared payments** to the alternate payee stop no later than the participant's death (or never start if the participant dies before entering pay status)?
- ❑ Does the order specify that payments continue to be made to the alternate payee regardless of the participant's death in the case of a **separate interest QDRO**?
- ❑ Does the order specify whether the participant's former spouse, as the alternate payee, is to be treated as the participant's spouse (regardless of whether the participant remarries) for all or part of the participant's remaining separate interest (in the case of a separate interest QDRO) or all or part of the participant's monthly benefit (in the case of a shared payment QDRO) for purposes of the qualified preretirement survivor annuity and/or the qualified joint-and-survivor annuity?

✓ **Does the order specify what happens when the alternate payee dies?**

- ❑ Does the order clearly specify what happens to the alternate payee's **separate interest**, if any, when the alternate payee dies before commencing benefits?
- ❑ Does the order clearly specify what happens to the participant's benefit when the alternate payee predeceases the participant in the case of a **shared payment QDRO**?

✓ **Was the order issued under a State's domestic relations law?**

- ❑ Is the order a judgment, decree, or order (including the approval of a property settlement agreement) issued pursuant to a State's domestic relations law (including a community property law)?
- ❑ Was the order an order issued by a state unit, typically a court, with authority to issue such judgments, decrees, or orders under a State's domestic relations law?
- ❑ Does the order relate to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant?

✓ **Does the order comply with other requirements?**

- ❑ Is it clear that the order does not require PBGC to pay benefits that have a value in excess of the

value of benefits to which the participant would otherwise be entitled from PBGC?

- ❑ Is it clear that the order does not require PBGC to pay any type or form of benefit, or provide any option, that PBGC does not otherwise pay or provide to participants and alternate payees with respect to the plan?
- ❑ Is it clear that the order does not require PBGC to pay benefits to an alternate payee that are required to be paid to another alternate payee under a previous QDRO?
- ❑ Is it clear that the order does not require PBGC to pay benefits to an alternate payee in an amount or form that is not permitted under ERISA or the Code?
- ❑ Is it clear that the order does not require PBGC to pay benefits to the alternate payee for any period before PBGC receives the order?
- ❑ Is it clear that the order does not require PBGC to pay benefits as a **separate interest** to the alternate payee if the participant already is receiving benefit payments?
- ❑ Is it clear that the order does not require PBGC to change the benefit form if the participant already is receiving benefit payments?

Appendix A – Defined Benefit Pension Plans and PBGC Benefit Rules

Defined Benefit Pension Plans

There are two basic types of pension plans: defined benefit plans and defined contribution plans. PBGC insures benefits in most private-sector defined benefit plans. PBGC does not insure benefits in defined contribution plans, such as 401(k) plans.

A *defined benefit plan* promises each participant a specified benefit at retirement. The benefit usually is based on a formula such as the number of years a participant has worked for a company and/or the participant's average salary for the last few years of work or over the participant's career.

Defined benefit plans may pay retirement benefits in a variety of ways. The most common form of benefit payment is an annuity. Normally, annuity payments are paid over the participant's life, over the lives of the participant and a beneficiary, or over the longer of the participant's life or a specified period.

A participant will automatically receive his or her benefit in the form of an annuity unless the participant chooses (with spousal consent, if married) a different form of payment. An unmarried participant usually will receive an annuity for his or her life. A married participant usually will receive a qualified joint-and-survivor annuity (QJSA), unless the participant has waived it with spousal consent.

If a married participant dies **after** starting to receive retirement benefits, the participant's spouse will receive the survivor portion of the QJSA, unless the participant had waived the QJSA with spousal consent. If the QJSA is not waived with spousal consent, the person who was the participant's spouse at retirement will receive the survivor portion of the QJSA when the participant dies even if the parties are divorced at the participant's death. If a married participant dies **before** starting to receive retirement benefits, the participant's spouse will receive a qualified preretirement survivor annuity (QPSA), unless the participant had waived the QPSA with spousal consent.

A plan may provide that it will distribute a participant's benefit immediately as a lump sum without the participant's election (or the participant's spouse's consent) if the value of the lump sum is \$5,000 or less.

Many defined benefit plans offer participants a choice of times at which they may retire—early, normal, or late retirement. The date a participant chooses to retire and start payments usually will affect the monthly amount of pension benefits the participant receives. In most plans, the longer a participant waits to start receiving benefits, the larger the monthly benefit payments will be.

PBGC Benefit Rules

PBGC guarantees most, but not all, pension benefits in plans that it insures. PBGC does not guarantee nonpension benefits, such as most death benefits (but PBGC does pay the plan's QPSA benefit even if QPSA coverage previously was waived). PBGC does not guarantee benefits over a certain amount. For example, for single-employer pension plans terminating in 2009, the maximum amount that PBGC guarantees is \$4,500 per month (\$54,000 per year) for a participant who starts receiving benefits at age 65 with a straight-life annuity. The maximum amount is reduced if benefits will be paid in a form other than a straight-life annuity. This maximum amount also is reduced for a retiree who is younger than age 65 when the plan terminates and for participants and beneficiaries who begin receiving benefit payments after the plan terminates but before reaching age 65. (However, the maximum guaranteed amount generally is not reduced on account of the age of a participant where the participant retired early (or could have retired early) under the plan due to a disability that is determined by the Social Security Administration to meet its definition of disability.) PBGC's guarantee may be limited for supplemental benefits and benefit increases resulting from plan amendments within five years before the plan terminates. PBGC may pay more than the guaranteed amounts if the plan has enough assets or as a result of PBGC's recoveries from employers.

For participants who have started receiving benefit payments or have properly chosen benefit forms before their plans are trustee'd, PBGC generally will pay benefits in the forms chosen. For participants who have not started to receive benefits or have not chosen benefit forms at the time their plans are trustee'd, PBGC will pay benefits in the form that participants elect. The election choices are the plan's automatic forms—generally a straight-life annuity for an unmarried participant (or a married participant who has obtained spousal consent) and a QJSA for a married participant—and the optional forms provided under PBGC regulations (see 29 C.F.R. §4022.8(c)). The optional forms provided currently by PBGC for an unmarried participant or a married participant who has obtained spousal consent are a: (1) straight-life annuity, (2) five-year certain-and-continuous annuity, (3) ten-year certain-and-continuous annuity, (4) fifteen-year certain-and-continuous annuity, (5) joint-and-50%, -75%, or -100% survivor annuity, and (6) joint-and-50%-survivor “pop-up” annuity.

The annuity benefit form available to an alternate payee who is not yet in pay status depends on the type of QDRO. With a separate interest QDRO, an alternate payee may choose from among optional annuity benefit forms (1) through (4) offered by PBGC, regardless of what benefit form the participant chooses. With a shared payment QDRO, the alternate payee will receive a portion of each payment that is

being paid to the participant in an amount designated by the QDRO; the alternate payee does not choose the annuity benefit form.

Under both types of QDROs, if benefit payments to the participant have not started, the QDRO may provide that the alternate payee will be treated as the participant's spouse for all or part of the QPSA and/or the QJSA with respect to either the participant's benefit (in the case of a shared payment QDRO) or the portion of the benefit in which the participant retains a separate interest (in the case of a separate interest QDRO). In such case, the alternate payee would have the right to consent to a waiver by the participant of the QJSA; the alternate payee would receive a QPSA if the participant died before starting payments.

PBGC will provide specific information about the choices of annuity benefit forms at the time a participant or alternate payee applies for benefits. With regard to a separate interest, PBGC will pay a lump sum if the value of the benefit (determined separately for the participant and alternate payee) is \$5,000 or less at plan termination.

Appendix B – Domestic Relations Orders Qualified Before PBGC Becomes Trustee

While this booklet deals with domestic relations orders issued after PBGC becomes trustee of a plan, PBGC receives and administers domestic relations orders in two other situations: (1) where PBGC becomes trustee of a plan that is already paying benefits pursuant to a QDRO and (2) where PBGC becomes trustee of a plan where the plan administrator already has approved a QDRO but payments under the QDRO have not started yet.

When PBGC becomes trustee of a plan under which the plan administrator already has approved orders as QDROs, PBGC reviews the QDROs to see if there is anything in the QDROs that would call their qualification into question under PBGC's rules. If any issues arise, PBGC communicates with the parties to the QDRO.

Because PBGC guarantees may not cover a participant's full pension benefit, a participant's benefit may be reduced after PBGC takes over a plan. This can reduce benefits payable to one or both parties under the QDRO. PBGC will not treat the order as not qualified solely because benefits paid by PBGC require reduction of the participant's and/or the alternate payee's benefit. PBGC will apply the reduction rules to domestic relations orders qualified before PBGC becomes trustee (assuming the QDRO is silent) in the same manner as it applies the reduction rules to orders that are qualified after PBGC

becomes trustee. For example, if a QDRO awarded a fixed percentage of the participant's benefit to the alternate payee, the benefits payable to both the participant and the alternate payee would be reduced to reflect PBGC's guarantee limitations. On the other hand, if a QDRO awarded a fixed dollar amount of the participant's benefit to the alternate payee, the participant's benefit would be reduced first to reflect PBGC's guarantee limitations. The fixed dollar amount awarded to the alternate payee would be reduced only if the total decrease to be made exceeded the participant's benefit. If the participant or alternate payee desires that the guarantee limitation be applied differently, an amended order indicating how any reduction should be addressed would need to be submitted to PBGC for review.

PBGC guarantee limitations apply to domestic relations orders qualified before or after PBGC becomes trustee. In addition, PBGC benefit form limitations, options and benefit start date provisions apply to the alternate payee's benefit payments or elections under pre-trusteeship domestic relations orders if the alternate payee's benefit form election is made after PBGC trusteeship.

Appendix C – QDRO Tax Rules

The following information is not intended to be tax advice. Any questions on tax matters should be directed to a tax advisor or the IRS.

Pension benefits are taxable when they are paid to the participant or, in some cases, to the alternate payee. Internal Revenue Service *Publication 575, Pension and Annuity Income*, explains these rules. A local IRS office will be able to provide this publication, or it may be obtained from the IRS's Web site at www.irs.gov or by calling 1-800-TAX FORM.

Benefit payments are taxable to the plan participant, except for payments made under a QDRO directly to an alternate payee who is a spouse or former spouse (the spouse or former spouse is taxed under these circumstances). This means, for example, that the participant is taxed on payments made under a QDRO to his or her children as alternate payees during the lifetime of the participant.

In some cases participants have made their own contributions to their plan. When pension benefits are paid, a portion of each benefit payment is a return of some of these contributions. Because these contributions were already taxed before they were contributed to the plan, they will not be taxed again when they are paid out from the plan. The tax law provides

detailed rules for determining what portion of each payment is a tax-free return of the participant's contributions.

There is generally an additional 10 percent tax on non-annuity payments that are made before age 59 1/2. However, this 10 percent tax does not apply to payments made to an alternate payee under a QDRO. There are special rules regarding rollovers of amounts paid to alternate payees.

Section 401(a)(9) of the Code specifies the date by which distributions must start. Question and Answer 6 of the Treasury regulation §1.401(a)(9)-8 addresses how the required minimum distribution rules of section 401(a)(9) of the Code apply to the separate interest of an alternate payee. Payments to the alternate payee must begin no later than the date the participant is required to begin payments under section 401(a)(9) of the Code. The regulation limits the period over which benefits may be paid with respect to the alternate payee's separate interest, thereby limiting what survivor benefits may be paid, including the length of the period certain in a certain-and-continuous annuity.

Appendix D – PBGC Model Child Support Shared Payment 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 pay a portion of the participant's monthly benefit payments as child support. **If the participant's benefit payments have not started, you may submit a shared payment or a separate interest child support order to PBGC. After a participant's benefits have started, only a shared payment order may be submitted.** Only a shared payment order model is shown because, in PBGC's experience, it is more commonly used.*

NOTE: Child support payments under a shared payment order cannot start until 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 child or other dependent of the Participant.

[If the alternate payee has a guardian, add:]

The Alternate Payee’s legal guardian is **[name of guardian]**, whose mailing address is **[address]**.

[If the payments are required to be sent to a state agency, add:]

Payments under this Order are to be mailed to **[name of agency and its full mailing address]**. Questions concerning these payments should be addressed to **[specify contact at the state agency]** at **[telephone number]**.

SECTION 3. AMOUNT OF BENEFIT TO BE PAID TO ALTERNATE PAYEE

a. Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee **[\$x/x%]** of each of the Participant’s monthly benefit payments.

b. **OPTIONAL:** When **[insert future event]** occurs and PBGC is notified in writing, PBGC shall **[increase/decrease]** the amount paid to the Alternate Payee from each of the Participant’s monthly benefit payments to **[\$x/x%]**.

SECTION 4. PBGC BENEFIT ADJUSTMENTS

If PBGC adjusts the Participant’s benefit, any reduction shall be applied by decreasing **[pro rata the Participant’s and the Alternate Payee’s benefits/the Participant’s benefit first/the Alternate Payee’s benefit first]**, and any increase shall be

applied by increasing [pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit/the Alternate Payee's benefit].

SECTION 5. BENEFITS START

Payments to the Alternate Payee shall be payable as of [such future date as the Alternate Payee elects/a future specified date/the date when PBGC starts payments to the Participant]. (This date must be the first day of a month and cannot be before the Participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10.) Payment shall not be made until PBGC qualifies this domestic relations order and receives a PBGC benefit application from the Alternate Payee. Payments to the Alternate Payee shall not start earlier than the date the Participant starts payments.

SECTION 6. FORM OF BENEFIT

The Alternate Payee shall not have the right to elect a form of benefit. The amount paid to the Alternate Payee will be determined by the benefit form elected by the Participant.

SECTION 7. BENEFITS STOP

PBGC shall make payments to the Alternate Payee until the [earlier of the Participant's or Alternate Payee's death/earlier of: the Participant's or Alternate Payee's death, a specific date, or the date PBGC is notified of the occurrence of [insert specific event]].

SECTION 8. DEATH OF PARTICIPANT

If the Participant dies before the Alternate Payee, the Alternate Payee is not entitled to any payments as of the first of the month following the Participant's death.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before the Participant, PBGC shall return the Participant's monthly benefit payments to the amount that the Participant would be receiving had there been no Order.

SECTION 10. 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 11. 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

PBGC Model Child Support QDRO Instructions

This model is a simplified shared payment QDRO that is designed to provide child support only. As this PBGC model is a shared payment QDRO, payments to the alternate payee cannot start until the participant's benefit payments have started. The participant's benefit payments cannot start earlier than the participant's "earliest PBGC retirement date" (defined in PBGC regulation 29 C.F.R. §4022.10).

Section 10 of the *PBGC Model Shared Payment QDRO*, which addresses treating the alternate payee as the participant's spouse for surviving spouse benefits, has been omitted because only spouses and former spouses qualify for those benefits. See the instructions beginning on page 13 for information on all other aspects of this model. If more than one child or other dependent is to be covered by this order, list each child or dependent (and guardian, if applicable) in section 2.b., and specify the amount of the benefit to be paid to each child or dependent in section 3.

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

PBGC Model Treat-as-Spouse QDRO Instructions

The instructions for the *PBGC Model Shared Payment* and *Separate Interest QDROs* are generally applicable to the *PBGC Model Treat-as-Spouse QDRO*. See pages 13-24 for those instructions. Below are instructions for items unique to this model.

Do not use this model if the alternate payee will receive part of the participant's benefit as a shared payment or separate interest. This model should be used if the sole purpose of the Order is to treat the alternate payee as the participant's spouse for a qualified preretirement survivor annuity (QPSA), a qualified joint-and-survivor annuity (QJSA), or both. To also provide an alternate payee with part of the participant's benefit, use the *PBGC Model Separate Interest QDRO* or the *PBGC Model Shared Payment QDRO* instead of this model.

Section 1. Identification of Plan— see instructions for section 1 of Model QDRO Instructions.

participant, this section refers to sections 3 and 7, which describe the survivor annuity.

Section 2. Identification of Participant and Alternate Payee(s)— see instructions for section 2 of Model QDRO Instructions.

Section 5. PBGC Benefit Adjustments

Under this model order, the alternate payee will receive a survivor annuity upon the death of the participant. The survivor annuity is based on the amount of the participant's benefit, and this section states that the alternate payee's benefit will be adjusted if PBGC adjusts the participant's benefit.

Section 3. Surviving Spouse Rights of Alternate Payee— see instructions for section 10 of Model QDRO Instructions.

Section 6. Benefits Start

The date on which the alternate payee's benefit payments will begin depends on whether the benefit is a QJSA or a QPSA. A QJSA may start only on the first of the month following the month of the participant's death. In the case of a QPSA, the benefit may start only after the

Section 4. Amount of Benefit to Be Paid to Alternate Payee.

Because the alternate payee will receive a survivor annuity upon the death of the

participant's death. However, the QPSA may not be paid before the date the participant would have first been entitled to begin receiving a benefit. The alternate payee may defer receipt of the benefit. In either case, an application must be submitted by the alternate payee before PBGC will start making benefit payments.

Section 7. Form of Benefit

Under the QJSA, the form of benefit is a survivor annuity paid as a straight-life annuity for the alternate payee's life. However, an alternate payee who is entitled to a survivor annuity under a QPSA may elect from PBGC a straight-life annuity (which ends on the alternate payee's death) or a certain-and-continuous annuity (which continues until the later of the alternate payee's death or the end of the period certain) when applying for the benefit. An alternate payee who is entitled to a QJSA may consent, in writing on a notarized form, to an election by the participant of a PBGC optional form (straight-life, certain-and-continuous, or joint-life) when the participant retires.

Section 8. Benefits Stop

The time when benefits stop for the alternate payee generally is governed by the form elected in the PBGC benefit application.

Section 9. Death of Participant

In a treat-as-spouse QDRO, the death of the participant makes the alternate payee eligible for a survivor annuity (either the QPSA or the QJSA, depending on when the participant dies).

Section 10. Death of Alternate Payee

In a treat-as-spouse QDRO, the death of the alternate payee before the participant effectively ends the alternate payee's entitlement to any portion of the participant's survivor benefit.

Section 11. Other Requirements— see instructions for section 11 of Model QDRO Instructions.

Section 12. Reservation of Jurisdiction— see instructions for section 12 of Model QDRO Instructions.

Appendix F — Language for Including a Contingent Alternate Payee

(Note: If a contingent alternate payee is designated, the alternate payee's separate interest benefit may be actuarially adjusted downward to reflect the possibility of payment to the contingent alternate payee. In addition, if the contingent alternate payee does receive benefit payments, the monthly benefit amount will be calculated based on the age of the contingent alternate payee as of the time payments begin to the contingent alternate payee.)

[If a contingent alternate payee is to be named in the *PBGC Model Separate Interest QDRO*, use this language for section 9:]

SECTION 9. DEATH OF ALTERNATE PAYEE

a. Death Before Commencing Benefits

(i) If the Alternate Payee dies before commencing benefits, the Contingent Alternate Payee named in subsection c, below, shall be paid an amount actuarially equivalent to the value of the Alternate Payee's benefit determined under section 3. In such case, all references in this Order to the Alternate Payee shall apply to the Contingent Alternate Payee, except as otherwise indicated (for example, survivor benefits may only be paid to the spouse or former spouse). Payments cannot start before the participant's "earliest PBGC retirement date," which is defined in 29 C.F.R. §4022.10. PBGC shall pay the Contingent Alternate Payee's benefit in the form elected by the Contingent Alternate Payee on the PBGC benefit application.

(ii) If the Alternate Payee and the Contingent Alternate Payee die before commencing benefits, the separate interest shall **[revert to the Participant/be forfeited to PBGC]**.

b. Death After Commencing Benefits

If the Alternate Payee or, if applicable, the Contingent Alternate Payee named in subsection c, below, dies after commencing benefits, any remaining fixed payments under a certain-and-continuous annuity shall be paid to the beneficiary designated on the PBGC benefit application. If the Alternate Payee or, if applicable, the Contingent Alternate Payee, was receiving a straight-life annuity at death, no further benefits will be payable.

c. Contingent Alternate Payee

The Contingent Alternate Payee is **[Name of the Contingent Alternate Payee]**, and is the **[spouse/former spouse/child/other dependent]** of the Participant. The Contingent Alternate Payee's mailing address is **[address]**. The Contingent Alternate Payee's Social Security Number is **[Social Security Number]**.

[If a contingent alternate payee is to be named in the *PBGC Model Shared Payment QDRO*, use this language:]

SECTION 9. DEATH OF ALTERNATE PAYEE

a. If the Alternate Payee dies before the Participant, the Contingent Alternate Payee named in subsection d, below, shall be paid **[\$x/x%]** of each of the Participant's monthly benefit payments. PBGC shall start payments to the Contingent Alternate Payee when PBGC starts payments to the Participant, or, if payments to the Participant have already started, after the Alternate Payee dies. Payments shall not be made until the Contingent Alternate Payee submits a PBGC benefit application to PBGC.

b. Notwithstanding any other provision in this Order, PBGC shall make payments to the Contingent Alternate Payee until the **[earlier of the Participant's or Contingent Alternate Payee's death/earlier of: the Participant's or Contingent Alternate Payee's death, a specific date, or the date PBGC is notified in writing of the occurrence of [insert [specific event]]]**.

c. If the Alternate Payee and the Contingent Alternate Payee die before the Participant, PBGC shall return the Participant's monthly benefit payments to the amount that the Participant would be receiving had there been no Order.

d. The Contingent Alternate Payee is **[name of the Contingent Alternate Payee]**, and is the **[spouse/former spouse/child/other dependent]** of the Participant. The Contingent Alternate Payee's mailing address is **[address]**. The Contingent Alternate Payee's Social Security Number is **[Social Security Number]**.

Appendix G — Language for Including Subsidized Early Retirement Benefits in a Separate Interest QDRO

(The **PBGC Model Separate Interest QDRO** can be modified to award the alternate payee a **pro rata** portion of a subsidized early retirement benefit, payable if and when the participant begins to receive the subsidized benefit. See pp. 15 and 16 for an explanation of a subsidized early retirement benefit. If so modified, PBGC assigns the amount of the subsidy to the alternate payee in the same proportion (with actuarial adjustments for payments already received by the alternate payee) as the alternate payee's separate interest share of the participant's benefit. If the QDRO is silent with respect to whether any portion of the subsidized early retirement benefit is assigned to the alternate payee, PBGC will pay the participant the entire subsidy.)

[If the alternate payee is to receive a pro rata portion of the participant's subsidized early retirement benefit, insert the section below in the PBGC Model Separate Interest QDRO, and renumber sections 11 and 12 to 12 and 13, respectively.]

NOTE: section 11 should not be included unless the Plan provides a subsidized early retirement benefit.

SECTION 11. SUBSIDIZED EARLY RETIREMENT BENEFITS

PBGC shall pay the Alternate Payee a *pro rata* share of any early retirement subsidy that is paid to the Participant at retirement. The Alternate Payee shall be entitled to a *pro rata* share of any early retirement subsidy provided to the Participant on the date the Participant commences benefits, but not before. If the Alternate Payee commences receiving benefits on an unsubsidized basis before the Participant retires with a subsidized benefit, then the amounts payable to the Alternate Payee shall be increased when the Participant retires with a subsidized benefit in accordance with PBGC's practices and actuarial principles in order to provide the Alternate Payee with a *pro rata* share of the subsidy. The *pro rata* share shall be calculated in the same manner as the Alternate Payee's share of the Participant's retirement benefits is calculated pursuant to the terms of this Order.

Appendix H – How to Obtain Certain Participant Information from PBGC

Participants' records in PBGC's possession are protected under the Privacy Act of 1974 (5 U.S.C. § 552a) and PBGC's implementing regulations. In accordance with these rules, to obtain certain information about the participant's pension entitlement in order to draft or amend a domestic relations order, the prospective alternate payee (or his or her guardian) must send in a written request to PBGC's Disclosure Officer. The request must:

- ✓ State that the information the alternate payee is requesting “will be used solely to obtain a qualified domestic relations order under state domestic relations laws”;
- ✓ Be signed by the alternate payee and notarized;
- ✓ Provide the participant's name (and the participant's social security number if known);
- ✓ Describe the alternate payee's relationship to the participant; and
- ✓ Ask for the following information only:
 - The name of a participant's pension plan;
 - The actual or estimated amount of the participant's benefit under Title IV of ERISA;
 - The form(s) in which the participant's benefit is payable; and
 - Whether the participant currently is receiving benefit payments under the plan or, if not, the earliest date(s) such payments could commence to the participant.

The request should be submitted directly to PBGC's Disclosure Officer at:

Disclosure Officer
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

If you have additional questions about this request, you can contact PBGC's Disclosure Office at 202-326-4040.

Glossary

The following terms may be useful in understanding this booklet. These definitions are simplified and apply to the information discussed in this booklet.

Actuarially Equivalent—Different benefits or benefit forms having the same value as of a given date using a specified set of assumptions.

Alternate Payee—A participant's spouse, former spouse, child, or other dependent who, under a QDRO, has a right to receive all, or a portion, of the participant's pension benefits under a plan.

Annuity—A form of benefit in which payments are made at regular intervals for a specified period of time. The most common form of annuity pays monthly benefits for life.

Beneficiary—The person named to receive benefits upon the death of a participant or alternate payee.

Benefit—A payment provided for under a pension plan.

Certain-and-Continuous (C&C)

Annuity—An annuity that pays benefits over the longer of the recipient's life or a specified period.

Contingent Alternate Payee—An alternate payee under a QDRO whose benefit is contingent upon the death of an alternate payee.

Defined Benefit Plan—A type of pension plan that promises participants specified benefits at retirement. Retirement benefits usually are based on the number of years

worked for a company or in an industry and may also be based on salary during that time.

Defined Contribution Plan—A type of pension plan in which an employee receives the amount in an individual account, which includes contributions made by the employer and, if applicable, the employee. Retirement benefits are based on the amount in each participant's account, adjusted for investment experience and plan expenses. The most common types of defined contribution plans include profit-sharing plans, 401(k) plans, employee stock ownership plans (ESOPs), thrift savings plans, and money purchase plans.

Domestic Relations Order—Any judgment, decree, or order (including approval of a property settlement agreement) that (1) provides child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (2) is made pursuant to a state's domestic relations law.

Earliest PBGC Retirement Date (EPRD)—The "earliest PBGC retirement date" has a specific meaning for PBGC purposes and is defined in PBGC regulation 29 C.F.R. §4022.10. Typically, a participant's age as of his or her EPRD will be 55 unless (1) under the plan's terms, the participant cannot receive a benefit until a

later age, or (2) PBGC determines under a facts-and-circumstances test that the participant could retire earlier than 55. PBGC tells each participant what his or her EPRD is in a benefit determination.

Guaranteed Benefits—The amount of a pension plan’s benefit that is guaranteed by PBGC as of the plan’s termination date. However, if the plan terminates while the plan sponsor is in bankruptcy and the bankruptcy was initiated on or after September 16, 2006, the guarantee amount is fixed as of the bankruptcy filing date.

Joint-and-Survivor Annuity—An annuity that pays benefits over the participant’s lifetime and thereafter over the lifetime of the person named as the survivor.

Life Expectancy—The number of years a person is expected to live, on average, after a given age.

Lump Sum—A form of benefit payment in which the entire benefit is paid at one time.

Normal Retirement Age—The age for normal retirement defined under a plan. In most cases, the normal retirement age will not be greater than 65 years of age or, if later, the fifth anniversary of the date the participant commenced participation under the plan.

Participant—An employee or former employee who may be entitled to a benefit under a pension plan, or whose beneficiaries may be entitled to a benefit. A participant is said to participate in or to be covered by the plan.

PBGC Model Child Support Shared Payment QDRO—The *PBGC Model Child Support Shared Payment QDRO* gives the alternate payee a portion of the participant’s benefit payments under the plan during the participant’s lifetime. This model is designed to provide child support only; it is a simpler version of the *PBGC Model Shared Payment QDRO*.

PBGC Model Separate Interest QDRO—The *PBGC Model Separate Interest QDRO* divides the value of the participant’s benefits into two separate parts—one for the participant and one for the alternate payee. This model also allows for the assignment of survivor benefits.

PBGC Model Shared Payment QDRO—The *PBGC Model Shared Payment QDRO* gives the alternate payee a portion of the participant’s benefit payments under the plan during the participant’s lifetime. In other words, the participant and the alternate payee share the payments. This model also allows for the assignment of survivor benefits.

PBGC Model Treat-as-Spouse QDRO—The *PBGC Model Treat-as-Spouse QDRO* treats the alternate payee as the participant’s spouse for purposes of a qualified preretirement survivor annuity (QPSA), a qualified joint-and-survivor annuity (QJSA), or both. This model does not provide any part of the participant’s benefit to the alternate payee as a shared payment or separate interest.

Plan Administrator—The person or persons who administer the plan. If no one is designated as the administrator in the plan document, the employer is considered to be the plan administrator.

Qualified Domestic Relations Order (QDRO)—A QDRO is a domestic relations order that gives an alternate payee the right to receive all or a portion of the benefits payable to a participant under the plan, and that PBGC determines meets certain legal requirements with respect to information that must be provided, and provisions that cannot be included, in such an order.

Qualified Joint-and-Survivor Annuity (QJSA)—A QJSA is a joint-and-survivor annuity where (1) the participant receives a definite amount of money at regular intervals for life, and (2) after the participant dies, the surviving spouse (who may be the spouse to whom the participant was married at retirement, or a former spouse who is treated by a QDRO as the participant's spouse) receives a definite amount of money (not less than 50% or more than 100% of the amount received by the participant before death) at regular intervals for life.

Qualified Preretirement Survivor Annuity (QPSA)—A QPSA is an annuity provided to a surviving spouse when a vested participant dies before receiving payment of his or her benefit. The annuity is paid for the life of the surviving spouse (who may be the spouse to whom the participant was married at the time the participant died, or a former spouse who is

treated by a QDRO as the participant's spouse), is calculated based on the benefit that had been earned by the participant before death, and generally is equal to the survivor's portion of the QJSA. In PBGC-trusted plans, the surviving spouse may elect to receive the QPSA in the form of a straight-life annuity or certain-and-continuous annuity.

Single-Life Annuity—An annuity that pays benefits over a period of time that depends, at least in part, on the survival of only one person, for example, a straight-life annuity or certain-and-continuous annuity.

Spousal Consent—A spouse's written and notarized agreement to allow the participant to waive the QPSA or elect a form of benefit other than a QJSA.

Spouse—Husband or wife as determined under applicable law. A QDRO can provide that the participant's former spouse be treated as the participant's spouse for certain pension benefits.

straight-life Annuity—An annuity that pays benefits over the recipient's lifetime. Once the recipient dies, no further annuity payments are payable to anyone.

Subsidized Early Retirement Benefit—Many plans allow "early retirement," that is, a participant may retire before the participant reaches the normal retirement age defined under a plan. Some plans actuarially reduce the early retirement benefit to reflect the longer payout. Other plans may not reduce the benefit at all—for example, paying the same amount per

month starting at age 60 as the participant would receive starting at age 65. To the extent that the benefit is not reduced actuarially, or only partially reduced, the benefit is a subsidized early retirement benefit.

Survivor Benefit—The survivor part of a preretirement survivor annuity or a joint-and-survivor annuity that is paid to a beneficiary after the participant dies.

Value—The actuarially determined amount needed at a point in time to provide a specific monthly benefit at some time in the future. Value depends on the amount of the monthly benefit payment, when the benefit payments start and stop, the age(s) of the recipient(s), mortality assumptions, and interest assumptions. Also referred to as “present value” or “actuarial present value.”

For information about a pension plan that PBGC has trusteeed, benefit information with respect to a participant in such a plan, or information about Qualified Domestic Relations Orders, call **PBGC's Customer Contact Center, 1-800-400-7242**, or write to **PBGC QDRO Coordinator, P.O. Box 151750, Alexandria, VA 22315-1750**. (TTY/TDD users should call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 1-800-400-7242.)

To submit a domestic relations order to PBGC (or a draft order for a preliminary, informal review), send it to **PBGC QDRO Coordinator, P.O. Box 151750, Alexandria, VA 22315-1750**.

PRIVACY ACT NOTICE

The PBGC is giving you this notice (whether you are a participant or an alternate payee) pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. §552a (2006), as part of a collection of information from you related to a qualified domestic relations order. The PBGC uses the information collected to determine whether an alternate payee is entitled to a portion (or all) of the participant's benefit and to make appropriate payments. The Social Security Numbers provided are used by the PBGC to identify the participant's and the alternate payee's records within the PBGC, to report income for tax purposes, and to respond to lawful requests for information from other individuals and entities. Your response is voluntary (although a court may require you to give the PBGC some or all of this information). However, the PBGC generally cannot pay any portion of a living participant's benefit to someone else, except as provided in a qualified domestic relations order. Failure to provide information to the PBGC including a Social Security Number may delay or prevent the PBGC from paying a benefit to an alternate payee.

The PBGC may release information about you to other individuals and entities when necessary and appropriate under the Privacy Act, including: to third parties to make benefit payments to you; to a company that was responsible for the pension plan or to entities related to that company; to a labor organization that represents you; to obtain information from the Federal Aviation Administration relevant to a pilot or former pilot's eligibility for a disability benefit; to obtain your address from other sources when the PBGC does not have a current or valid address for you; and to a limited extent to your spouse, former spouse, child, or other dependent when such individual may be entitled to benefits from the PBGC.

The PBGC may also release information about you to appropriate law enforcement agencies when the PBGC becomes aware of a possible violation of civil or criminal law. If the PBGC, an employee of the PBGC, the United States, or another agency of the United States, is involved in litigation, the PBGC may provide relevant information about you to a court or other adjudicative body or to the Department of Justice when it represents the PBGC. The PBGC may also provide information about you to the Office of Management and Budget in connection with review of private relief legislation or to a Congressional office in response to an inquiry that office makes about you at your request.

The PBGC publishes notices in the *Federal Register* that describe in more detail when information about you may be made available to others. A copy of the most recent *Federal Register* notice may be obtained from the PBGC's Customer Contact Center by calling 1-800-400-7242. If you use a TTY/TDD, call toll-free 1-800-877-8339 and give the communications assistant the PBGC's telephone number. The PBGC's authority to collect information from you, including your Social Security Number, is derived from 29 U.S.C. §§1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, and 1350 (2006).



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