Divorce Orders & PBGC

U.S. GOVERNMENT AGENCY

This booklet provides general information to attorneys and other pension professionals on qualified domestic relations orders (QDROs) submitted to the Pension Benefit Guaranty Corporation (PBGC) after a pension plan terminates and PBGC becomes trustee. 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 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 and the Internal Revenue Service.

Contents

I PBGC and Qualified Domestic Relations Orders

The Pension Benefit Guaranty Corporation (PBGC) is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 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. 4000 *et. seq.* and the agency's operating policy manual.

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, i.e., a QDRO. See section 206(d) of the Employee Retirement Income Security Act, as amended, and section 414(p) of the Internal Revenue Code of 1986.

PBGC reviews a submitted domestic relations order to determine whether the order is qualified before paying 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 — if possible, this should be the plan's formal name.

Amount to be paid, when payments start, and payment form. A QDRO must specify or allow the alternate payee to choose when payments to the alternate payee start and the form of payments. A QDRO also 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 dollar amount or percentage is to be determined.

When benefits stop, and what happens on the death of the plan participant or the alternate payee. A QDRO should specify when benefits to the alternate payee stop. It also should specify whether benefits will be paid to an alternate payee on the death of the participant and, if so, the amount of the benefits. In particular, 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 when the alternate payee dies.

What A QDRO Must Not Include

A QDRO must not require PBGC to:

- provide any type or form of benefit, or any option, not otherwise provided by PBGC or allowed by ERISA and the Code;
- pay benefits with a value in excess of the value of benefits that would otherwise be payable by PBGC or allowed by ERISA and the Code; or
- 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.

II PBGC Model QDROs

PBGC has developed two model QDROs for 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***. A QDRO should be clear as to whether the alternate payee is to receive a portion of the overall value of the participant's pension or just a portion of each of the participant's pension payments. PBGC's Model QDROs make this distinction clear.

The ***PBGC Model Separate Interest QDRO*** 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 accrued 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 receive pension benefits over his or her lifetime rather than the participant's lifetime, and can start his or her payments before the participant starts payments. The PBGC Model Separate Interest QDRO may only be used if the participant has not yet started to receive payments.

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. Under the PBGC Model Shared Payment QDRO, the timing and duration of payments to the alternate payee will be tied to the participant's payments. Payments to the alternate payee stop when the participant dies unless the QDRO provides that the alternate payee is to receive survivor benefits.

PBGC Model Separate Interest QDRO

(This model QDRO is for use 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 accrued benefit between the participant and the alternate payee. This model may only be used if payment of the participant's benefits has not started.)

IN THE ____________ COURT OF _______________

DIVISION _______________ COUNTY _______________

IN RE MARRIAGE/SUPPORT OF	:	
____________________	:	
PETITIONER,	:	
V.	:	CASE NO. _____________
____________________	:	
PARTICIPANT,	:	
RESPONDENT.	:	

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 ("ERISA") and section 414(p) of the Internal Revenue Code of 1986 ("Code"). This QDRO 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 and former spouses 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 PAYEES

a. **[Name of the Participant]** is hereafter referred to as the "Participant." The Participant's address is **[specify address]**. The Participant's Social Security Number is **[specify Social Security Number]**. The Participant is not receiving benefits from PBGC with respect to this Plan.

b. **[Name of the Alternate Payee]** is hereafter referred to as the "Alternate Payee." The Alternate Payee's address is **[specify address]**. The Alternate Payee's Social Security Number is **[specify Social Security Number]**. The Alternate Payee is the **[spouse/former spouse/child/other dependent]** of the Participant.

c. **[Name of the Contingent Alternate Payee]** is hereafter referred to as the "Contingent Alternate Payee." The Contingent Alternate Payee's address is **[specify address]**. The Contingent Alternate Payee's Social Security Number is **[specify Social Security Number]**. The Contingent 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 the value of **[$x per month/x%]** of the Participant's accrued benefit. The Participant's accrued benefit shall be determined as of **[date of divorce/date of plan termination/some other date]**.

SECTION 4. PBGC BENEFIT LIMITATIONS

If PBGC adjusts the Participant's benefit after PBGC approves this Order, any reduction shall be applied by decreasing **[pro rata the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining accrued benefit first/the value of the Alternate Payee's separate interest first/specify another way]**, and any increase shall be applied by increasing **[pro rata the Participant's and the Alternate Payee's benefits/the value of the Participant's remaining accrued benefit first/the value of the Alternate Payee's separate interest first/specify another way]**.

SECTION 5. BENEFITS START

PBGC shall start payments to the Alternate Payee on **[such future date as the Alternate Payee elects/a future specified date/submission of the Order]** under PBGC payment procedures.

SECTION 6. FORM OF BENEFIT

PBGC shall pay the Alternate Payee's benefit in the form of a **[single life annuity over the Alternate Payee's life/temporary life annuity for child support or alimony]**.

SECTION 7. BENEFITS STOP

PBGC shall stop payments from the Alternate Payee’s separate interest in accordance with the form of payment specified in section 6.

SECTION 8. DEATH OF PARTICIPANT

Payments under the Alternate Payee’s separate interest shall not be affected by the Participant’s death.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before commencing benefits and section 2 of this Order does not provide for a Contingent Alternate Payee on the Alternate Payee’s death, the Alternate Payee’s separate interest shall **[revert to the Participant/be forfeited to PBGC]**. If section 2 of this Order provides for a Contingent Alternate Payee, and if the Alternate Payee dies before commencing benefits, the Contingent Alternate Payee shall be paid an amount actuarially equivalent to the value of **[$x per month/x%]** of the Participant’s accrued benefit. The Contingent Alternate Payee’s separate interest shall be paid **[specify start, form, and stop]**.

SECTION 10. SPOUSAL RIGHTS OF FORMER SPOUSE AS ALTERNATE PAYEE

a. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant’s spouse for purposes of the Participant’s joint and survivor annuity resulting from the accrued benefit in which the Participant retains a separate interest. The Alternate Payee’s right to the spousal survivor annuity shall apply only to **[$x per month/x%]** of the accrued 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 preretirement survivor annuity resulting from the accrued benefit in which the Participant retains a separate interest. The Alternate Payee’s right to the spousal preretirement survivor annuity shall apply only to **[$x per month/x%]** of the accrued benefit in which the Participant retains a separate interest.

SECTION 11. COMPLIANCE WITH APPLICABLE LAWS

The parties to this Order intend that it comply with applicable provisions of ERISA and the Code. Nothing in this Order shall require PBGC:

a. To pay any benefits not permitted under the Code or ERISA;

b. To provide any type or form of benefit or any option not provided by PBGC with respect to the Plan;

c. To pay total benefits with a value in excess of the value of the benefits the Participant otherwise would receive under Title IV of ERISA; or

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.

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

(This model QDRO is for use 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. This model may be used before or after the participant begins receiving benefit payments.)

IN THE ____________ COURT OF _______________

DIVISION _______________ COUNTY _______________

IN RE MARRIAGE/SUPPORT OF	:	
____________________	:	
PETITIONER,	:	
V.	:	CASE NO. _____________
____________________	:	
PARTICIPANT,	:	
RESPONDENT.	:	

<u>QUALIFIED DOMESTIC RELATIONS ORDER</u>

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 ("ERISA") and section 414(p) of the Internal Revenue Code of 1986 ("Code"). This QDRO 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 and former spouses 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 PAYEES

a. **[Name of the Participant]** is hereafter referred to as the "Participant." The Participant's address is **[specify address]**. The Participant's Social Security Number is **[specify Social Security Number]**. The Participant **[is/is not]** receiving benefits from PBGC with respect to this Plan.

b. **[Name of the Alternate Payee]** is hereafter referred to as the "Alternate Payee." The Alternate Payee's address is **[specify**

address]. The Alternate Payee's Social Security Number is **[specify Social Security Number].** The Alternate Payee is the **[spouse/former spouse/child/other dependent]** of the Participant.

c. **[Name of the Contingent Alternate Payee]** is hereafter referred to as the "Contingent Alternate Payee." The Contingent Alternate Payee's address is **[specify address].** The Contingent Alternate Payee's Social Security Number is **[specify Social Security Number].** The Contingent 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 **[$x/x%]** of each of the Participant's monthly benefit payments. When **[insert future event]** occurs and PBGC is notified, PBGC shall **[increase/decrease]** the amount paid to the Alternate Payee from each of the Participant's monthly benefit payments to **[$x/x%].**

SECTION 4. PBGC BENEFIT LIMITATIONS

If PBGC adjusts the Participant's benefit after PBGC approves this Order, 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/specify another way]**, and any increase shall be applied by increasing **[pro rata the Participant's and the Alternate Payee's benefits/the Participant's benefit first/the Alternate Payee's benefit first/specify another way].**

SECTION 5. BENEFITS START

PBGC shall start payments to the Alternate Payee **[on such future date as the Alternate Payee elects/on a future specified date/on submission of the Order/when PBGC starts payments to the Participant]** under PBGC payment procedures. Payments shall not start earlier than the date the Participant starts payments.

SECTION 6. FORM OF BENEFIT

PBGC shall pay the Alternate Payee's benefit at the same time as the Participant's benefit is paid to 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 **[Participant’s death/earlier of the Participant’s death or the occurrence of a specific date or event]**.

SECTION 8. DEATH OF PARTICIPANT

Except for any survivor benefits described in section 10, if the Participant dies before the Alternate Payee, PBGC shall stop payments, if any, to the Alternate Payee as of the first payment that would have followed the Participant’s death.

SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before the Participant and section 2 of this Order does not provide for a Contingent Alternate Payee on the Alternate Payee’s death, PBGC shall return the Participant’s monthly benefit payments to the level that the Participant would be receiving had there been no QDRO. If section 2 of this Order provides for a Contingent Alternate Payee on the Alternate Payee’s death, the Contingent Alternate Payee shall be paid **[$x/x%]** of each of the Participant’s monthly benefit payments. The Contingent Alternate Payee’s benefits shall be paid **[specify start and stop]**.

SECTION 10. SPOUSAL RIGHTS OF FORMER SPOUSE AS ALTERNATE PAYEE

a. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant’s spouse for purposes of the Participant’s joint and survivor annuity resulting from the Participant’s accrued benefit. The Alternate Payee’s right to the spousal survivor annuity shall apply only to **[$x per month/x%]** of the Participant’s accrued benefit.

b. PBGC **[shall/shall not]** treat the Alternate Payee as the Participant’s spouse for purposes of the Participant’s preretirement survivor annuity resulting from the Participant’s accrued benefit. The Alternate Payee’s right to the spousal preretirement survivor annuity shall apply only to **[$x per month/x%]** of the Participant’s accrued benefit.

SECTION 11. COMPLIANCE WITH APPLICABLE LAWS

The parties to this Order intend that it comply with applicable provisions of ERISA and the Code. Nothing in this Order shall require PBGC:

a. To pay any benefits not permitted under the Code or ERISA;

b. To provide any type or form of benefit or any option not provided by PBGC with respect to the Plan;

c. To pay total benefits with a value in excess of the value of the benefits the Participant otherwise would receive under Title IV of ERISA; or

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.

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 QDROs 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 single 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 (and one contingent alternate payee, if desired). If the QDRO is intended to cover more than one PBGC-trusteed plan or more than one alternate payee, the QDRO should be clear as to which plan and alternate payee each provision is addressing. One way of doing this is to repeat sections 1 through 10 as necessary.

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 Payees

(a) Insert the name, address and Social Security Number of the participant. Also, in the PBGC Model Shared Payment QDRO, indicate whether the participant is or is not currently receiving benefit payments from PBGC with respect to the plan specified in section 1.

(b) Insert the name, 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.

(c) Add the same information for any contingent alternate payee.

The QDRO should be clear on the identity of the participant, the alternate payee, and any contingent alternate payee. For example, the QDRO could name the participant's spouse as the alternate payee and the participant's child as a contingent alternate payee. In the event an alternate payee or contingent alternate payee is a minor or legally incompetent, the QDRO must include the name and address of the legal representative who will receive payments on behalf of that person.

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

Insert the flat dollar amount, percentage of the value of the participant's accrued benefit, or percentage of the participant's benefit payment that the alternate payee is to receive. Also insert the date as of which the benefit is to be calculated.

The parties must decide how much of the plan participant's benefit the alternate payee will receive. Because the participant in a defined benefit plan often does not know the specific amount that will be paid at retirement, this can be difficult for the parties to address and for PBGC to interpret. The assistance of an actuary may be helpful in making these complex determinations.

PBGC has found there is less confusion with a QDRO 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 the benefit under the formula can be determined based on the information in the QDRO. The QDRO must include any information that would be necessary to determine the benefit amount (for example, a child's birthdate 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" to the value of a specified portion of the participant's accrued benefit. PBGC will then determine the amount of the alternate payee's monthly benefit using the actuarial factors in the participant's pension plan or, if the plan does not have applicable factors, PBGC factors. (The QDRO cannot provide for PBGC to use other factors.)

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 participant commences benefit payments. It allows the alternate payee's portion to increase or decrease at a specified time or upon a specified event. The QDRO must specify the amount and timing of any change. The Shared Payment QDRO cannot provide for payments to the alternate payee prior to submission of the domestic relations order. However, much the same result can be achieved by giving the alternate payee increased initial payments.

There are many ways to determine the portion of an accrued benefit or pension payment that the alternate payee is to receive under a QDRO. The QDRO 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 the date of division.

The PBGC Model Separate Interest QDRO provides that the alternate payee is to receive a specific amount or a percentage of the value of the participant's accrued benefit (for example, 50% of the value of the accrued 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 participant's accrued benefit before the alternate payee's separate interest was created.

The Separate Interest QDRO must specify the date as of which the participant's benefit and the alternate payee's portion of that benefit are to be determined. Typically, for QDROs issued after PBGC trustees a plan, the portions of benefits are determined based on the participant's accrued benefit as of the date of divorce, separation, or plan termination. (In plans trusteed by PBGC, all benefit accruals will have ceased no later than the date the plan terminated.)

Example 1 - Separate Interest QDRO. *Carol is age 30 and Mark is age 40. Their QDRO provides that Mark will receive a 50% interest in the pension benefit Carol had accrued at the time of their divorce. Carol's accrued benefit at the time of the divorce is $600 per month in the form of a life annuity with payments beginning at her age 65. Mark's 50% interest in Carol's accrued benefit has a value that is actuarially equivalent to a life annuity of $300 ($600 x 50%) per month to Carol beginning at her age 65.*

Mark is older 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 benefits. Mark's actual monthly life annuity payments will depend on his age when he starts benefit payments and the plan's actuarial factors.

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, 25% of each monthly benefit payment). The combined benefit payments to the participant and the alternate payee under a Shared Payment QDRO cannot exceed the benefit that would be paid to the participant if the QDRO were not in effect.

Example 2 – Shared Payment QDRO. *Dick agrees to provide his former spouse, Jane, with 25% of each of his monthly pension payments once his payments start. Dick's payments will be $900 per month beginning at age 65. Jane's portion of Dick's payment will be $225 per month, calculated as follows: $900 x 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 look at what portion of the participant's benefit or payments 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 or payments (for example, 50%) would be multiplied by a fraction, the numerator of which is the number of years during the parties' marriage that the participant earned benefits under the plan, and the denominator of which is the total number of years the participant earned benefits under the plan. This method of allocating the benefit is sometimes referred to as the fractional or time method.

Example 3 - Fractional Method (Separate Interest QDRO). *Continuing with* ***Example 1,*** *assume Carol had earned benefits under the plan for 10 years as of the date of the divorce and was married to Mark for 5 of those years. If their QDRO modified Mark's 50% separate interest by the fractional method, Mark's 50% would be further reduced for the marriage fraction of 5/10. Thus, Mark's pension would be actuarially equivalent to the value of a single life annuity of $150 ($600 x 50% x 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.)*

Section 4. PBGC Benefit Limitations

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 incomplete records or complex benefit structures — final benefit amounts will differ from the estimated payments.

If the estimated payments are too low, PBGC will pay the difference (plus interest) in a lump sum. If the estimated payments are too high, PBGC will actuarially reduce the final monthly benefit payments (generally by no more than 10%) to recover any overpayment gradually.

If a QDRO awarded a fixed percentage of the participant's benefit to the alternate payee and provided no guidance on benefit adjustments, PBGC would proportionally adjust the benefits payable to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit. If a QDRO awarded a fixed dollar amount of the participant's benefit to the alternate payee with no additional guidance, PBGC would first increase or decrease the participant's benefit to reflect PBGC's adjustment. The fixed dollar amount awarded to the alternate payee would not be adjusted for an increase and would be reduced only if the total decrease to be made exceeded the participant's benefit.

Section 5. Benefits Start

Indicate the date on which the alternate payee's benefit payments should begin. The models allow for benefits to commence on a specific date, an election by the alternate payee, or submission of the order. The PBGC Model Separate Interest QDRO may not be used if the participant's benefit payments have commenced. The PBGC Model Shared Payment QDRO does not allow the alternate payee's payments to commence until the participant starts payments. The appropriate insert will depend in part on whether the participant has commenced payments.

The parties must decide whether they want the alternate payee to have the right to begin receiving benefit payments before the participant does. The PBGC Model Separate Interest QDRO permits the alternate payee to specify the date his or her benefits will commence or to choose a commencement date at some later time. Payments to the alternate payee may begin as early as the participant's "earliest retirement age" (or earlier, if specifically allowed by the plan) even if the participant is still working. Payments must begin no later than the date required under section 401(a)(9) of the Code (see Appendix C).

The "earliest retirement age" has a specific statutory meaning for purposes of QDROs. If the participant is still employed by the employer who maintained the plan, the earliest retirement age is the earliest age (but not earlier than age 50) the participant could receive benefits under the plan if the participant were to separate from service. If the participant is not actively employed, the earliest retirement age is the earliest age the participant could choose to begin receiving benefits.

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 start. For example, Mark may want to begin receiving benefit payments at age 60 when Carol will be only 50 years old. If Mark and Carol had used a Shared Payment QDRO and Carol did not commence benefits until age 65 (normal retirement age under the plan), Mark would not be able to begin receiving benefit payments until age 75.*

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 PBGC Model Shared Payment QDRO can begin receiving benefits immediately. If the participant has not begun receiving benefit payments, the alternate payee cannot 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

Indicate the form of benefit to be paid to the alternate payee. Generally, under the PBGC Model Separate Interest QDRO the form of the alternate payee's benefit will be a single life annuity. The PBGC Model Shared Payment QDRO specifies that PBGC pays the alternate payee's benefits at the same time as it pays benefits to the participant.

Generally, if a QDRO is issued after PBGC becomes trustee of a plan, the only form that PBGC will pay the alternate payee as a separate interest is a single life annuity for the life of the alternate payee.

However, the PBGC Model Separate Interest QDRO allows payment of a temporary life annuity for child support or alimony. Parties or their representatives should contact PBGC before including any other benefit form in a QDRO to make certain it is a form that PBGC pays.

> ***Example 6.*** *Continuing with* ***Example 1****, the* ***Separate Interest QDRO*** *could provide that Mark will receive benefits as a life annuity, actuarially adjusted to reflect the date payments begin and his life expectancy. Alternatively, assuming that the plan allowed payments before the earliest retirement age, the QDRO could provide that Mark's benefit is payable as a temporary life annuity for alimony. Either benefit will have the same value as a $300 per month benefit payable to Carol over her lifetime beginning at her age 65.*

In the PBGC Model Shared Payment QDRO, the alternate payee must receive his or her payments as an annuity ending on the earliest of the death of the participant, the death of the alternate payee, or the occurrence of a specified event. The alternate payee cannot change the form of benefit payments selected by the participant. However, the PBGC Model Shared Payment QDRO (like the PBGC Model Separate Interest QDRO) can provide spousal rights and thus affect the form of benefit payment that the participant can receive. 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 spouse for purposes of all or part of the benefit. 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 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.

> ***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 spousal rights, Dick must elect a joint and survivor annuity with Jane as beneficiary, unless Jane consents to Dick's election of another benefit form.*

Section 7. Benefits Stop

Indicate when benefits will stop for the alternate payee. This is generally governed by the form specified in section 6.

Once benefit payments to the participant or the alternate payee have started, the form of benefit will govern when benefits stop. For example, the form may provide that payments to an alternate payee will stop on the participant's death or upon specific events such as the remarriage of the alternate payee or the date a child attains a certain age.

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 PBGC Model Shared Payment QDRO provides that payment of a benefit to an alternate payee stops upon the death of the participant (except to the extent the alternate payee is to be treated as the surviving spouse under section 10).

Section 9. Death of Alternate Payee

Indicate what happens when the alternate payee dies. In the PBGC Model Separate Interest QDRO, the focus is on the alternate payee's dying before commencing benefit payments. (If benefits have started, the form chosen governs and there generally will be no survivor benefits.) In the PBGC Model Shared Payment QDRO, the focus is on the alternate payee's dying before the participant. In both cases, indicate whether there is a contingent alternate payee and, if so, when the contingent alternate payee receives benefits and how much.

The PBGC Model Separate Interest QDRO addresses what happens to the alternate payee's benefit if the alternate payee dies before he or she commences benefit payments. If the Separate Interest QDRO is silent on what happens if the alternate payee dies before commencing 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 a child) to get a separate interest if the alternate payee dies before commencing benefits. The QDRO also could name the child as the alternate payee or as a second (rather than contingent) alternate payee. The parties could also provide that, if the alternate payee (or a 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 the alternate payee's estate.

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 commenced to the alternate payee). If the Shared Payment QDRO is silent on any other arrangement and the alternate payee (and any contingent alternate payee) dies before the participant, the participant's monthly benefit payments will be returned to the amount that the participant would be receiving had there been no QDRO. The alternate payee cannot pass payments on to another beneficiary upon death. However, as with the PBGC Model Separate Interest QDRO, the PBGC Model Shared Payment QDRO could be drafted to cover multiple or contingent alternate payees, such as payments to the former spouse alternate payee and then, upon the former spouse's death, to the children as contingent alternate payees until they reach the age of majority.

*Example 8. Continuing with the **Shared Payment QDRO** in **Example 2**, Dick retires and commences 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 Shared Payment 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. Spousal Rights of Former Spouse as Alternate Payee

Indicate whether the alternate payee will be treated as the spouse of the participant for purposes of part or all of the preretirement survivor annuity and/or the joint and survivor annuity. If the alternate payee is to be treated as the spouse for all of the benefit in which the participant retains a separate interest or for the participant's accrued benefit insert 100%. Otherwise insert the percentage or amount with respect to which the alternate payee will be treated as the spouse.

If a participant dies before starting benefit payments, PBGC pays the participant's surviving spouse a preretirement survivor 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 only a portion of the survivor benefit of a participant who has not yet begun to receive payments. Thus, the alternate payee can be designated as the spouse for the preretirement survivor annuity and/or the qualified joint and survivor annuity with respect to either the participant's accrued benefit or the portion of the accrued benefit in which the participant retains a separate interest. These survivor benefits would be in addition to any separate interest or shared payment the alternate payee already 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.

Example 9. *Continuing with the* ***Separate Interest QDRO*** *in* ***Example 1,*** *Carol dies in an accident at age 35. Mark's separate interest in Carol's pension benefit is unaffected by her death. However, assuming the QDRO is silent as to survivor benefits, and 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 preretirement survivor benefit.*

Example 10. *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, his pension benefits commence as a joint and 50% survivor annuity. Under the terms of their Shared Payment QDRO, Jane receives* *a 25% portion of the total annuity benefit payable during Dick's life. Three years after commencing 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 for her lifetime equal to 50% of the total annuity benefit.*

Section 11. Compliance with Applicable Laws

The provisions in this section should be in all QDROs 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

PBGC will review a domestic relations order certified or otherwise authenticated under state domestic relations procedures 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 QDRO, 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 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.

At the request of a participant or an alternate payee (or either of their representatives), PBGC will informally review a domestic relations order in draft form to see if it will satisfy qualification requirements. After PBGC has reviewed a draft domestic relations order, the alternate payee should submit, as soon as possible, a certified or authenticated copy of the final order to PBGC for approval.

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 19153, Washington, D.C. 20036-0153.

Benefit Payments During the Domestic Relations Order Review. After PBGC receives a certified or authenticated domestic relations order, 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 as soon as the 45-day period for filing an appeal has elapsed and the alternate payee has completed an application that provides the necessary personal data. 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 unless an appeal is filed, PBGC is notified in writing that the parties are trying to make the necessary changes in the domestic relations order, or there is a court proceeding.

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.

Change of Address or Entitlement Status. PBGC should be notified immediately of any change in address. It is also important to notify PBGC promptly 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, PBGC should be immediately notified when that event occurs. If payments are improperly made by PBGC after the event, PBGC will seek to recover overpayments. PBGC is not obligated to change the participant's benefit to reflect the event until PBGC is notified of the event.

Checklist

PBGC uses the following checklist to review domestic relations orders, including orders that use the PBGC Model QDROs, that are received after PBGC trustees a plan:

✓ **Does the order clearly specify the PBGC-trusteed pension plan to which it applies?**

- ❏ Does the order clearly identify the defined benefit pension plan (e.g., formal plan name)?
- ❏ Is the plan trusteed by PBGC?

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

- ❏ Does the order clearly identify the participant (e.g., full name, last known mailing address, and Social Security Number)?
- ❏ Does the order clearly identify each alternate payee and each contingent alternate payee (e.g., full name, last known mailing address, and Social Security Number)?
- ❏ Does the order provide the name and address of the legal representative for alternate payees who are minors or legally incompetent?

✓ **Does the order specify the amount to be paid to each alternate payee, the length of time for the payment, and the manner in which it will be paid?**

- ❏ Does the order clearly specify the amount or percentage (or state how to determine the amount or percentage) of the participant's accrued benefit or 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 commence for each alternate payee?
- ❏ 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 provide any type or form of benefit, or any option, that PBGC does not otherwise 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 the Code or ERISA?
- ❏ Does the order clearly require payment to the alternate payee (rather than to the participant for payment to the alternate payee)?

✓ What happens when the participant dies?

- ❏ Does the order specify whether the participant's former spouse, as the alternate payee, is to be treated as the participant's spouse with respect to all or part of the participant's remaining separate interest or participant's benefit for purposes of the preretirement survivor annuity and/or the qualified joint and survivor annuity?

✓ 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?

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

- ❏ Was the order entered by a court of competent jurisdiction?
- ❏ Is the order a judgment, decree, or order (including approval of a property settlement agreement)?
- ❏ 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?
- ❏ Is the order made pursuant to a State domestic relations law (including a community property law)?

IV Glossary

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

Accrued Benefit – The benefit the participant has earned under the plan.

Actuarially Equivalent – Having the same value as of a given date using the same assumptions.

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

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.

Contingent Alternate Payee – An alternate payee whose benefit is contingent upon the death of another alternate payee or some other event.

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 employer contributes to individual participant accounts. In some defined contribution plans, participants may also contribute money. Retirement benefits are based on the amount in each participant's account, adjusted for investment experience. The most common types of defined contribution plans include profit-sharing plans, 401(k) plans, employee stock ownership plans (ESOPs), and thrift savings 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 domestic relations law.

Earliest Retirement Age – For purposes of the QDRO rules, earliest retirement age is the earlier of (1) the date the participant is entitled to a payment of benefits under the plan, or (2) the later of (a) the date the participant reaches age 50 or (b) the earliest date the participant could begin to receive benefits if he or she no longer worked for the company.

Guaranteed Benefits – The amount of pension benefits insured by PBGC.

Joint and Survivor Annuity – An annuity that pays benefits over the recipient's lifetime and over the lifetime of the person named as beneficiary.

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 at which a participant can retire under the plan and receive a full pension benefit. In most cases, the normal retirement age will not be greater than 65 years of age.

Participant – A member of a pension plan. A participant is said to participate in or to be covered by the plan.

PBGC Model Separate Interest QDRO – The PBGC Model Separate Interest QDRO divides the participant's benefits into two separate parts — one for the participant and one for the alternate payee.

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.

Plan Administrator – The person or persons who administer the plan. If the name of the administrator is not in the plan document, the employer is considered to be the plan administrator.

Preretirement Survivor Annuity – The form of QPSA paid by PBGC.

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 meets certain other legal requirements with respect to the information and benefits involved.

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 receives a definite amount of money (not less than 50% or more than 100% of the participant's amount) at regular intervals for life.

Qualified Preretirement Survivor Annuity (QPSA) – A QPSA is an annuity provided to a surviving spouse when the participant dies before receiving payment of his or her benefit. The annuity is for the life of the surviving spouse, is calculated based on the benefit that had been earned when the participant died, and generally is equal to the survivor's portion of the QJSA.

Single Life Annuity – An annuity that pays benefits over the recipient's lifetime. Also known as a straight-life annuity. Once the recipient dies, there are no further annuity payments.

Spouse – Husband or wife as determined under applicable state law. A QDRO can provide that the participant's former spouse be treated as the participant's spouse.

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

Survivor Benefit – The benefit a survivor receives after the participant dies.

Temporary Life Annuity – An annuity that pays benefits over the shorter of the recipient's life or a specified period.

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

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 salary for the last few years of work.

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, or over the lives of the participant and a beneficiary.

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 has waived the QJSA with spousal consent. 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 has waived the QPSA with spousal consent.

A plan may 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 not greater than $3,500.

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

PBGC Benefit Rules

PBGC guarantees most, but not all, pension benefits in plans that it insures. PBGC does not guarantee certain death and supplemental benefits and may guarantee only part of benefit increases resulting from plan amendments within five years before the plan terminates. In addition, ERISA sets a maximum limit on the benefit that PBGC guarantees. For example, for pension plans terminating in 1996, the maximum guaranteed amount generally is

$2,642.05 per month ($31,704.60 per year). This maximum amount generally 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. The maximum amount also is reduced if benefits will be paid in a form other than a single life annuity. PBGC may pay more than the maximum guaranteed amounts if the plan has enough assets or if PBGC recovers amounts from employers.

For participants who have started receiving benefit payments or have properly chosen a benefit form before their plan terminates, PBGC generally will pay benefits in the form they had chosen. For participants who have not started to receive benefits or have not chosen a benefit form at the time their plan terminates, PBGC generally will pay benefits in the plan's automatic form, generally a single life annuity for an unmarried participant (or a married participant who has obtained spousal consent) and a qualified joint and survivor annuity for a married participant. PBGC will pay a lump sum if the value of the benefit is not in excess of $3,500 at plan termination. For these purposes, a plan will be considered to have terminated on the latest of the plan's termination date, the proposed termination date, or the date PBGC instituted proceedings for involuntary termination of the plan if no notice of intent to terminate was issued.

Appendix B — QDROs Issued Before PBGC Becomes Trustee

While this booklet deals with QDROs issued after PBGC becomes trustee of a plan, PBGC also receives and administers QDROs in two other situations: (i) where PBGC becomes trustee of a plan that is already paying benefits pursuant to a QDRO and (ii) where PBGC becomes trustee of a plan that has a QDRO already approved by the plan administrator but payments under the QDRO will not begin until sometime in the future.

When PBGC becomes trustee of a plan that has QDROs already approved by the plan administrator, PBGC reviews the QDROs to see if there is anything in the QDROs that would make them no longer qualified under its 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 in some cases 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 here (assuming the QDRO is silent) in the same manner as it applies the reduction rules to QDROs that are issued 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 parties want a different result, the QDRO (or an amended QDRO) should state the appropriate way to apply the reductions.

PBGC guarantee limitations apply to QDROs issued before PBGC becomes trustee, but PBGC benefit form limitations apply to the alternate payee's benefit payments or elections under these pre-trusteeship QDROs only where the QDRO was issued after the plan terminated. For this purpose, a plan will be considered to have terminated on the latest of the plan's termination date, the proposed termination date, or the date PBGC instituted proceedings for involuntary termination of the plan if no notice of intent to terminate was issued.

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 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. This means, for example, that the plan participant is taxed on payments under a QDRO to a plan participant's children. It also means that payments made other than directly to the spouse or former spouse (for example, to the participant for the former spouse) are taxed to the participant.

In some cases plan 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 commence. Question and Answer H-4 of the proposed Treasury regulation section 1.401(a)(9)-1 addresses how the required minimum distribution rules of section 401(a)(9) of the Code apply to the separate interest of an alternate payee. The proposed 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.

Notes

For information about a pension plan that PBGC has trusteed, benefit information with respect to a participant in such a plan, or information about Qualified Domestic Relations Orders, call **PBGC's Customer Service Center, 1-800-400-PBGC,** or write to **PBGC QDRO Coordinator, P.O. Box 19153, Washington, D.C. 20036-0153.**

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 19153, Washington, D.C. 20036-0153.**

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