



Pension Benefit  
Guaranty Corporation

# Qualified Domestic Relations Orders and 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 the Employee Retirement Security Act of 1974, as amended (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 published. 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 website at [www.pbgc.gov](http://www.pbgc.gov) or by calling PBGC at 1-800-400-PBGC (7242). (TTY/ASCII users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be reached by TTY). This edition of PBGC's booklet Qualified Domestic Relations Orders & PBGC includes the following changes from the guidance published in February 2022:

- Modifying the Glossary by adding the term "annuity starting date" and by clarifying the terms "certain-and-continuous annuity", "qualified domestic relations order", and "spouse".
- Clarifying the booklet with editorial changes.

## Required Paperwork Reduction Act Notice

Under ERISA, no part of an individual's benefit under a plan trusted by PBGC 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 0X/XX/2028). 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 \$700 in professional fees if the participant or alternate payee hires an attorney or other professional to prepare the QDRO. Comments concerning the accuracy of this estimate or suggestions for further reducing this burden may be sent to Pension Benefit Guaranty Corporation, Office of General Counsel, 445 12th Street S.W., Washington, DC 20024-2101.

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## I. Qualified Domestic Relations Orders and PBGC

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The Pension Benefit Guaranty Corporation (PBGC) is a federal agency that insures the benefits of workers, retirees, and beneficiaries participating in qualified, 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 plan benefits and the terms of the applicable plan document, subject to legal limits, to plan

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 who is recognized by the order as having a right to receive all, or a portion, of the participant's pension benefits under a plan). The exception applies only if the domestic relations order meets specific legal requirements and the plan administrator determines that it is qualified, that

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

### PBGC QDRO Requirements

*Identity of the plan participant, each alternate payee, and each pension plan.* A QDRO must specify the name, last known mailing address, and Social Security Number of the plan participant and each alternate payee covered by the order. A QDRO also must identify the name of each plan

*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 the QDRO must make clear the manner in which the amount is to be determined. A QDRO also must specify or allow the alternate payee to

*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 participant or alternate payee dies,

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<sup>1</sup> This booklet does not apply to domestic relations orders (DROs) submitted with respect to benefits held under PBGC's Missing Participants Program (MPP). Call PBGC at 800-736-2444 if you have a DRO that you

## What a QDRO Must Not Require

A QDRO must not require

- pay any benefits not permitted under ERISA or the Code;
- provide any type or form of benefit, or any option, not otherwise payable by PBGC with respect to the plan;
- pay benefits to the participant and alternate payee with a total value that exceeds the value of benefits that the participant would otherwise receive under title IV of ERISA;
- pay benefits to the alternate payee when those benefits are required to be paid to another alternate payee under a QDRO that is in effect prior to the order;
- 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

## II. PBGC Model QDROs

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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, and language for including a contingent alternate payee is located in Appendix F.) A QDRO should be clear as to whether the alternate payee is to receive a portion of the actual benefit payments made to the participant (a shared payment order) or the value of a separate portion of the participant's retirement

*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 participant's benefit is divided into two separate parts, with each part providing the participant and the alternate payee with his or her separate interest in a lifetime annuity. Unlike the *PBGC Model Shared Payment QDRO* (see below), the *PBGC Model Separate Interest QDRO* gives the alternate payee control over the timing and form of their benefit payments. The alternate payee may (1) start their payments before the participant (subject to certain restrictions), (2) receive pension benefits over their lifetime rather than the participant's lifetime, and (3) choose a straight-life annuity or

*The PBGC Model Shared Payment QDRO may be used where the plan participant and the alternate payee will "share" each benefit payment.* The model may be used regardless of whether the participant has started receiving benefits. However, the alternate payee cannot begin receiving benefits before the participant does under this model. 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 as of the earlier of when the participant dies or



## SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE

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

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**

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

Starting at the time specified in section 5, PBGC shall pay to the Alternate Payee as a separate interest an amount actuarially equivalent to **[all/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/some other date]**. The Alternate Payee’s separate interest

**[If the alternate payee is to receive a pro-rata portion of the participant’s early retirement subsidy, insert the paragraph below. “Pro rata” means a proportionate allocation to two or more parts based on each part’s share of the whole. The paragraph below**

The Alternate Payee shall be entitled to a pro-rata share of any early retirement subsidy provided to the Participant. The portion of the early retirement subsidy payable to the Alternate Payee shall become payable 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 an early retirement subsidy, then the amount payable to the Alternate Payee shall be increased, in accordance with PBGC’s practices and actuarial principles, to provide the Alternate Payee with

a pro-rata share of the early retirement subsidy payable as of the

## 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**



**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].**  
 “Pro rata” means a proportionate allocation to two or more parts based

**SECTION 5. BENEFITS START**

The Alternate Payee’s annuity starting date shall be **[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

**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 (or in

**SECTION 8. DEATH OF PARTICIPANT**

The Participant’s death shall not affect payments of the Alternate Payee’s assigned separate interest. Additional benefits may be payable if the Alternate Payee is designated as the Participant’s

**SECTION 9. DEATH OF ALTERNATE PAYEE**

If the Alternate Payee dies before commencing benefits, the Alternate Payee’s separate interest shall **[revert to the Participant/be paid to the Contingent Alternate Payee (see Language for Including a Contingent Alternate Payee - Appendix F)]**. If the Alternate Payee dies after commencing benefits, see Section 7, the Alternate Payee’s

## SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE

*[NOTE: Section 10 applies only if the Alternate Payee is the spouse or former spouse of the Participant; it does not apply if the Alternate Payee is a child or other dependent of the Participant.]*

a. PBGC shall treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified joint-and survivor annuity (QJSA) for **[none/all/x%]** of the benefit to which the Participant retains a

b. PBGC shall treat the Alternate Payee as the Participant's spouse for purposes of the Participant's qualified preretirement survivor annuity (QPSA) for **[none/all/x%]** of the benefit to which the Participant retains

*[NOTE: Once a separate interest is qualified, the Alternate Payee's rights to benefits for life are guaranteed. In light of this, survivor benefits need not be provided in a separate interest order to ensure that the Alternate Payee continues to receive benefits after the Participant's death. However, if the parties desire that an additional amount be payable to the Alternate Payee at the Participant's death, one or both of the following provisions may be included. The survivor benefit in this case will be based on the benefit to which the Participant retains a separate interest, not on the entire benefit of the Participant before it was divided into two separate parts.]*

*[NOTE: When "X%" is used above, it refers to the portion of the survivor benefit awarded to the Alternate Payee – not the automatic survivor percentage of the plan's QJSA or QPSA (which is typically 50%). Thus, if the Alternate Payee is awarded 40% of the QPSA benefit and the plan's automatic survivor percentage for the QPSA is 50%, then the Alternate Payee will receive 20% of the Participant's benefit as his/her survivor benefit.]*

## SECTION 11. OTHER REQUIREMENTS

Nothing in this Order shall

- a. To pay any benefits not permitted under
- b. To provide any type or form of benefit or any option not otherwise payable 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
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under a QDRO that is in effect prior to this
- e. To pay benefits to the Alternate Payee for any period before PBGC

- f. To pay benefits as a separate interest to the Alternate Payee if the Participant is already receiving benefit payments; or
- g. To change the benefit form or change the beneficiary of a joint-life annuity 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.

### 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**

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_  
DIVISION \_\_\_\_\_ COUNTY \_\_\_\_\_

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----IN RE MARRIAGE/SUPPORT :

\_\_\_\_\_ :

PETITIONER, :

V : CASE NO. \_\_\_\_\_

\_\_\_\_\_ :

PARTICIPANT, :

\_\_\_\_\_ :

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### 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**

### SECTION 1. IDENTIFICATION OF PLAN

This Order applies to benefits under the **[formal name of the plan]** (“Plan”). The Pension Benefit Guaranty Corporation

## SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE

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

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

- 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
- 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

## 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**

## SECTION 5. BENEFITS START

The Alternate Payee’s earliest allowable commencement date shall be **[such future date as the alternate payee elects/the date when PBGC will start payments to the Participant/another future date]**. (This date must be the first day of a month and cannot be earlier than the later of the date PBGC receives this domestic relations order and the Participant’s annuity starting date.) Payment shall not be made until PBGC

## 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

## 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**

## 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

## SECTION 9. DEATH OF ALTERNATE PAYEE

If the Alternate Payee dies before the Participant, the shared payment shall **[revert to the Participant/be paid to the Contingent Alternate Payee (see Language for Including a Contingent**

## SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE

*[NOTE: Section 10 applies only if the Alternate Payee is the spouse or former spouse of the Participant; it does not apply if the Alternate Payee is a child or other dependent of the Participant.]*

*[NOTE: Survivor benefit may be assigned to the Alternate Payee only if the Participant is not already receiving benefits.]*

a. PBGC shall treat the Alternate Payee as the Participant's spouse **[[for purposes of [none/ all/X%] of any qualified joint-and-survivor annuity (QJSA) that becomes payable under the Plan with respect to the Participant] OR [to the extent of Participant's**

b. PBGC shall treat the Alternate Payee as the Participant's spouse **[[for purposes of [none/all/X%] of any qualified preretirement survivor annuity (QPSA) that becomes**

**payable under the Plan] OR [to the extent of Participant’s benefit assigned to the Alternate Payee under Section 3 above.]**

*[NOTE: When “X%” is used above, it refers to the portion of the survivor benefit awarded to the Alternate Payee – not the automatic survivor percentage of the plan’s QJSA or QPSA (which is typically 50%). Thus, if the Alternate Payee is awarded 40% of the QPSA benefit and the plan’s automatic survivor percentage for the QPSA is 50%, then the Alternate Payee will receive 20% of the Participant’s benefit as his/her survivor benefit.]*

**SECTION 11. OTHER REQUIREMENTS**

Nothing in this Order shall

- a. To pay any benefits not permitted under
- b. To provide any type or form of benefit or any option not otherwise payable 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
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under a QDRO that is in effect prior to this
- e. To pay benefits to the Alternate Payee for any period before PBGC
- f. To change the benefit form or change the beneficiary of a joint-life annuity 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.

## **PBGC Model QDRO Instructions**

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The following information on completing the *PBGC Model Separate Interest QDRO* and *Model Shared Payment QDRO* discusses each provision separately, but all 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

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

### **INTRODUCTORY PARAGRAPH**

Insert the applicable state domestic

### **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). PBGC will determine whether an order is qualified only for plans specifically named and for which PBGC is the trustee. If the participant participated in more than one pension plan, the parties are responsible for ensuring that each plan subject to

### **SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE**

(a) Insert the name, mailing address and Social Security

(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.

*NOTE: Documents filed in state courts may be made available to the public. To protect the privacy of the parties, the participant's and alternate payee's Social Security Numbers may be provided to PBGC in a separate document that has not been submitted to the court. If you choose to provide the information to PBGC in this way, note on the Order that this information is in a separate document. The Order should be clear on the identity of the participant and the alternate payee. PBGC uses Social Security Numbers provided to identify the participant's and alternate payee's records within PBGC, to report income for tax purposes, and to respond to lawful requests for information from other individuals and entities. 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**

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 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 has found there is less confusion with an Order that states a specific percentage of the benefit (for Separate Interest QDROs) or specific percentage or dollar amount of the monthly benefit (for Shared Payment QDROs), 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 it 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

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

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

*NOTE: 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 and/or up to a specified date.*

The *PBGC Model Separate Interest QDRO* provides that the alternate payee will receive a benefit that is the actuarial equivalent of a specified portion of the benefit that the participant has earned as of a given date (see below), typically as a percentage of the participant’s benefit (for example, 50% of the participant’s benefit). An order may

However, when a separate interest order assigns a specified dollar amount to an alternate payee and benefit adjustments are subsequently necessary, the effect of the benefit adjustment on the amounts apportioned to each party may result in the parties receiving benefits that were unintended by the parties. The number of factors that go into the calculation of the participant's and alternate payee's benefits under a separate interest order (including the plan's early retirement factors (if applicable), the ages of the participant and alternate payee at the time

*NOTE: 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.*

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

*NOTE: In a Shared Payment QDRO, the sum of the portions paid to the participant and to the alternate payee cannot exceed the total amount that PBGC would have paid the participant assuming there was no Order.*

A 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, 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

***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 at the date of divorce. Carol's benefit at the date of divorce 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 \$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 depending upon when he starts. Mark's actual monthly life annuity payments will depend on his age when he starts benefit payments, 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.

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 “fully-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

A Separate Interest QDRO may be written so as to provide (or not provide) the alternate payee with all or part of the value of an early retirement subsidy payable under the plan upon the participant’s commencement of benefits before the participant’s normal retirement age. It may specify that PBGC will provide a “pro rata” share of the early retirement subsidy (here “pro rata” means a proportionate allocation to

*NOTE: If the Separate Interest QDRO is silent with respect to whether the alternate payee is to receive any portion of the participant’s early retirement subsidy, PBGC will pay the entire subsidy to the participant. Moreover, if the participant has not yet commenced benefits at the time the alternate payee elects to commence benefits under a Separate Interest QDRO and if the alternate payee commences benefits before the participant’s normal retirement age, then the alternate payee cannot receive any portion of the early retirement subsidy unless and until the participant commences benefits before the participant’s normal retirement age. Thus, if the participant retires on or after the participant’s normal retirement age, no portion of an early retirement subsidy is payable at all from the plan, either to the participant or the alternate payee, regardless of whether the alternate payee commenced benefits before the participant’s normal retirement age or whether all or a portion of the early retirement subsidy was awarded to the alternate payee.*

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

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

**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 consider 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 period of service (for example, the number of months) that the participant earned benefits under the plan during the parties' marriage, and the denominator of which is the total period of service (for example, the number of months)

*NOTE: If this method is used, the parties should carefully check the formula for accuracy and confirm that it provides the benefits they intend, especially if the order states period of service (for example, the number of months). For example, if PBGC's records indicate that the participant earned benefits under the plan for 126 months and the order uses 100 months, PBGC may disqualify the order or seek clarification from the parties.*

**Example 3 – Marital Fraction Method (Separate Interest QDRO).**

*Continuing with the facts provided in Example 1, assume Carol, the plan participant, earned benefits under the plan for ten years and was married to Mark for five 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 ten 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 apportioning 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 Defined Benefit Pension Plans and PBGC Benefit Rules—Appendix A). PBGC pays estimated benefits until it has completed its work on the plan and determined final benefits.

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 any benefit adjustments made by PBGC between the participant and alternate payee, PBGC will actuarially adjust their benefits pro rata. "Pro rata" means a proportionate allocation to two or

For example, assume a plan benefit of \$2,000 per month. An alternate payee is awarded 40% (\$800 per month) of the participant's benefit. The participant's remaining benefit is 60% of the original plan benefit (\$1,200 per month). Absent a QDRO, assume that PBGC must reduce the original plan benefit by \$200 per month as a result of the maximum insurance limitation, the phase-in limitation, and other legal limitations. PBGC generally reduces plan benefits on an actuarially equivalent basis. Thus, if the QDRO specified that the reduction would be applied pro rata, then PBGC would pay the participant 60% of the reduced benefit (actuarially adjusted for the participant's benefit) and would pay the alternate payee 40% of the reduced benefit (actuarially adjusted for the alternate payee's benefit). Therefore, the alternate payee's original awarded benefit would be reduced by \$80 (40% of \$200) per month to reflect PBGC's legal limitations. Similarly, the benefit remaining to the

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. Because any adjustments where fixed-dollar amounts have been awarded will first

## 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" (benefits cannot begin before the participant's earliest PBGC retirement date) and whether the participant has begun receiving benefits at the time the order is submitted to PBGC for qualification. The *PBGC Model Separate Interest QDRO* may not be used if

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

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 their "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

**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*

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 PBGC received the original signed order or a certified or authenticated copy unless a later date was provided for in the QDRO or unless the alternate payee requests a later date to begin receiving

**Example 5.**

*Continuing with Example 2, PBGC will not begin paying benefits to Jane of \$225 per month under the*

## 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-

A straight-life annuity pays benefits only for the lifetime of the alternate payee; no payments are made after the alternate payee dies. A certain-and-continuous 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 their beneficiary for the rest of the period certain. If the alternate payee dies after the end of

*NOTE: Because benefits under a certain-and-continuous annuity are guaranteed to be paid for at least the period certain, monthly payments under a certain-and-continuous annuity will be less than they would be if the alternate payee had selected a straight-life annuity.*

The alternate payee selects their form of benefit when applying to PBGC for benefits. If the alternate payee selects a certain-and-continuous 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**

### *Example 6.*

*Continuing with Example 1, the Separate Interest QDRO will allow Mark to apply to PBGC to receive benefits as a straight-life or a certain-and-continuous 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 certain-and-continuous annuity, an annuity that guarantees benefits for the longer of his life and the period certain, his monthly benefit will be less. If Mark chooses a ten-year certain-and-continuous 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



spouse based on all or a portion of the participant's benefit. If the Order so provides 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 alternate payee as the beneficiary without the alternate payee's consent at the time the pension is to begin. If under the Shared Payment QDRO the participant is receiving a certain-and-continuous annuity and the participant dies during

**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*

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

Under the *PBGC Model Separate Interest QDRO*, payments to an alternate payee generally stop upon the death of the alternate payee. But if the alternate payee elected a benefit form under which a designated beneficiary could be paid (for example, a certain-and-

**SECTION 8. DEATH OF PARTICIPANT**

Indicate what happens to payments when the

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 *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

**Example 8.**

*Continuing with the Shared Payment QDRO in Example 2, suppose that Dick retires and begins receiving his pension benefits as a ten-year certain-and-continuous annuity rather than a straight-life annuity. Dick and Jane's child is the designated beneficiary of Dick's certain-and-continuous 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 for eight more years until the end of the ten-year period certain.*

## SECTION 9. DEATH OF ALTERNATE PAYEE

Indicate what happens when the

In the *PBGC Model Separate Interest QDRO*, the QDRO may provide that if the alternate payee dies before commencing benefits, the alternate payee's benefit may be paid to a contingent alternate payee.

A contingent alternate payee must satisfy the definition of an alternate payee under ERISA. Therefore, the Order must identify that the contingent alternate payee is the participant's spouse, former spouse, child or other dependent. (See Language for Including a Contingent Alternate Payee—Appendix F). If the alternate payee's separate interest is paid to a contingent alternate payee, the separate interest benefit will be actuarially adjusted to reflect the contingent alternate payee's age. Alternatively, the QDRO may provide that if the alternate payee dies before commencing benefits, the alternate payee's separate interest reverts to the participant. If the QDRO is silent on what happens if the alternate payee dies before commencing benefits, PBGC will treat the separate interest as reverting to the participant. If the alternate payee's

A benefit "commences" for purposes of this Section on the alternate payee's annuity starting date. The annuity starting date is a date selected by the alternate payee when applying for benefits, or another date on

If the alternate payee dies after benefits commence, the benefit form elected in the alternate payee's benefit application (or the automatic form, if applicable) will govern. For example, under a straight-life annuity, payments end; under a period-certain-and-continuous annuity, payments

certain. PBGC will not qualify or enforce a separate interest Order that provides for the alternate payee's benefit to revert to the participant if

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 have received 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 alternate payees and/or one or multiple

**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*

## **SECTION 10. SURVIVING SPOUSE RIGHTS OF ALTERNATE**

This section applies only if the alternate payee is the spouse or former

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 the part (all or some portion) of the participant's benefit on

(Survivor rights may be assigned in a shared payment QDRO only if the participant's benefit payments have not started when the order is submitted to PBGC for qualification or if when the participant began receiving benefits the benefit was being paid as a joint and survivor benefit with the alternate payee as survivor. A separate interest QDRO may be used only if the participant's benefit payments have not started when the order is submitted to PBGC for qualification.) Note: PBGC will not

If the alternate payee is to receive a surviving spouse benefit only under 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

In general, if a participant dies before starting benefit payments, PBGC pays the participant's surviving spouse a qualified preretirement

elect to take the QPSA in the form of a straight-life annuity or a certain-and-continuous annuity. If a participant dies after starting benefit payments in the form of a qualified joint-and-survivor annuity (QJSA),

PBGC generally will qualify an Order assigning the alternate payee a survivor benefit based on the participant's benefit as of specific date or to the extent of participant's benefit assigned to the alternate payee under Section 3. Under the shared payment model QDRO, the participant's former spouse, as the alternate payee, can be treated as the surviving spouse (even if the participant has remarried) based on the

*NOTE: Where an order assigns to the alternate payee any part of the survivor portion of the QJSA, the participant cannot elect a form of benefit other than the plan's QJSA with the alternate payee as beneficiary unless the alternate payee consents to a different benefit form at the time the pension is to begin.*

The portion stated in Section 10 of the model is not the plan's automatic survivor percentage of a joint-and-survivor annuity benefit (e.g., a joint-and-50% survivor annuity benefit). It is the portion of the participant's

For the *PBGC Model Shared Payment QDRO*, the survivor benefit may be based on all or a portion of the participant's accrued benefit. If 35% is entered in section 10 of the shared payment QDRO, the alternate payee will get a survivor benefit based on 35% of the participant's benefit. The survivor benefit will then be 50%

Typically, separate interest orders do not need to award post-retirement survivor rights to an alternate payee. This is because the alternate payee's benefit is actuarially based on the alternate payee's lifetime so the alternate payee will receive lifetime benefits regardless of whether survivor benefits are awarded. Nor does it matter if the participant dies

When PBGC administers a separate interest order, it uses a totally severed approach. The participant's benefit is divided into two separate parts - one for the participant and one for the alternate payee. Once the order is qualified, the participant's death before or after the alternate payee's benefits commence will not affect the alternate payee's rights to a lifetime benefits. Thus, assignment of either pre- or post- survivor

However, some alternate payees and participants may choose to include survivor annuity provisions in their orders. Since such assignments are permissible, PBGC will qualify a separate interest order that includes an assignment of survivor rights to an alternate payee. For the *PBGC Model Separate Interest QDRO*, where the participant retains a separate interest in

as a separate interest by the participant. Thus, if 35% is entered in section 10 of a separate interest QDRO, and the separate interest retained by the participant is 40%, the alternate payee will get a survivor benefit based on 35% of the participant's separate interest, or 35% of the 40% separate interest retained by the participant. Assuming the survivor benefit under the plan is 50% of the participant's accrued benefit, the survivor benefit payable to the alternate payee will be 35% (the amount specified in section 10) times 40% (the participant's

Survivor benefits are in addition to a separate interest or shared payment the alternate payee also has a right to receive. Generally, 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 order was submitted before the participant's annuity starting date. An order assigning pre-retirement survivor benefits that is submitted before the participant's retirement date, but after his or her

*NOTE: If a participant is married as of their annuity starting date, and the participant did not waive the QJSA (with spousal consent), that spouse retains the right to the survivor annuity even if the participant and spouse later divorce. The spouse retains this right to the survivor annuity even if no domestic relations order is submitted to PBGC. Moreover, PBGC will not qualify an order which would require a surviving spouse benefit to be relinquished after the joint-and-survivor annuity is in pay status. PBGC will generally not enforce such an order, even if qualified by the prior plan administrator, unless the survivor benefits had been relinquished before PBGC trusted the plan.*

#### **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 surviving spouse for purposes of survivor benefits payable under the plan as of the date of marital separation based on 35% of his benefit. Dick can elect any form of annuity for the remaining 65% of his benefit. Assume also that Dick's monthly benefit payable as of the date of separation was \$900 per month. When Dick retires, he elects a qualified joint-and-50%-survivor annuity for his benefit as of the date of separation, which reduces the monthly benefit payable as of the date of separation from \$900 to \$820. Based on the terms of their Shared Payment QDRO, Jane is to receive 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.*

*Dick's benefit payable under the plan as of the date of separation, or \$287 (35% of \$820). Jane's joint-and-50% survivor annuity benefit based on the \$287 will be \$143.50 (50% of \$287).*

In rare cases, a pension plan provides for survivor benefits in addition to those required by ERISA. For example, certain plans, typically plans covering employees in the steel industry, provide “Free Surviving Spouse Benefits” – survivor benefits that impose no cost on a participant’s benefit, i.e., the participant’s benefit is not reduced to provide a survivor annuity. 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

#### **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

#### **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

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#### PLANNING FOR A QDRO

Plan ahead and allow enough 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 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. In addition, if PBGC does not receive a draft or signed domestic relations order until after the participant's death, there may be

#### **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

#### **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 in a release signed by the submitting party),

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

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

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

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 an original signed order or a certified or authenticated copy of one is submitted within 120 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 120 days to submit a

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 120-day period has ended, PBGC will grant an extension of the

PBGC will not suspend a participant's payments for more than 18 months from the date the first payment to the alternate payee would have been due under the order. If PBGC is unable to resolve the issue of whether the DRO is a QDRO within the 18-month period described above, PBGC will pay

#### **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 submitted as an original signed order or a certified or authenticated copy. For instructions on how to submit a draft order for a preliminary, informal review electronically, contact PBGC's Customer Contact Center at 1-800-400-7242. To submit a draft order for a

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 120 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 not suspend any portion

An alternate payee's annuity starting date cannot be before the date on which PBGC receives an original signed order or a certified or authenticated copy. PBGC will not establish an alternate payee's annuity

If an original signed order or a certified or authenticated copy is received by PBGC within the 120-day period, PBGC will review the order and 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 120-day period, PBGC will put the participant in pay status if he or she applied for benefits before the draft order was received or while it was being reviewed unless by the end of the 120-day period PBGC receives a copy of a court scheduling order, or a written statement by the participant or alternate



In that case, PBGC will grant an extension of the 120-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

### **MULTIPLE 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; the terms of the second order that differ from the first order will not be applied retroactively to the date the first order was submitted. If PBGC does not qualify the second

### **OTHER PLEADINGS RELATED TO DOMESTIC RELATIONS ACTIONS**

Upon receipt of any pleading intended to add PBGC as a party to a domestic relations action (including a request for joinder), PBGC will acknowledge receipt of the documents and will temporarily delay commencement of benefits for up to 120 days, in the same manner that PBGC does when reviewing a draft domestic relations order (see above). PBGC will not appear in any of these actions and will pay benefits only

*NOTE: if the participant is receiving benefits at the time that PBGC receives a request described in this section, PBGC will not suspend any portion of the participant's benefits until a domestic relations order is received by PBGC.*

### **WRITTEN NOTICE OF PENDING ORDER**

Anytime an interested party (including but not limited to the participant or alternate payee) notifies PBGC of a pending domestic relations order in writing (for example, in a letter or email, or on a pending benefit application), PBGC will delay the commencement of any benefits for a period of up to 120 days from the date PBGC was notified. For a participant who is in pay status, PBGC will not suspend any portion of the participant's benefit based solely on such notice. Participants can notify PBGC of a pending order by fax or by logging into our secure online

### **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, or an event that would



**ORDERS SUBMITTED AFTER DEATH**

PBGC will not fail to qualify an order submitted after the death of the participant solely for the reason that the order was issued by a court or appropriate entity on or after the participant's death. However, such an order will not be qualified unless it satisfies all of the requirements that otherwise must be met for an order to be a QDRO.

A participant's death may limit the benefits that can be assigned to an alternate payee under an order, without causing the order to fail to meet the legal requirements for qualification. For example, if a participant who was receiving a straight life annuity dies, PBGC will not qualify an order submitted after the participant's death because no participant benefits remain to assign to an alternate payee (unless the

## 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-trusteed pension plan to which it applies?
  - Does the order clearly identify the defined benefit pension plan (for example, the formal plan name)? If the participant has earned benefits in more than one plan, are all the plans clearly identified
  - Is the plan trusteed by PBGC?
- ✓ Does the order include the names of the persons to whom it
  - 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 the order?
- ✓ 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

- ✓ 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
- ✓ Was the order issued under a State's domestic relations
  - 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 or agency, 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.
- ✓ Does the order state assignments? Assignments must be specifically stated in the order to be enforceable by PBGC. For example, assignments of –
  - Early retirement subsidy
  - Assignment of any survivor benefits (including the QJSA and/or QPSA)
  - Free Surviving Spouse Benefits (see explanation in PBGC Model QDRO Instructions, Section 10, above)
- ✓ 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 either PBGC or the plan would not otherwise pay or provide to participants and alternate payees?
  - 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?

## Appendix A—Defined Benefit Pension Plans and PBGC Benefit Rules

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### DEFINED BENEFIT PENSION PLANS

There are two basic types of pension plans: defined benefit plans and defined contribution plans. PBGC insures benefits of workers, retirees and beneficiaries participating in most private-sector defined benefit plans. PBGC does not insure benefits in defined contribution plans, such as

**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

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 participant will automatically receive their 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 their life. A married participant usually will receive a qualified joint-and-survivor annuity (QJSA), unless the participant has

If a married participant dies after starting to receive retirement benefits, the participant's spouse at retirement ordinarily 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 ordinarily 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.

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

## PBGC BENEFIT RULES

PBGC guarantees most, but not all, pension benefits in plans that it insures. PBGC does not guarantee non-pension benefits, such as most death benefits (but PBGC does pay the plan's QPSA benefit even if QPSA coverage previously was waived before plan termination). PBGC does not guarantee benefits over a certain amount. For example, for single-employer pension plans terminating in 2024, the maximum amount that PBGC guarantees is \$7,107.95 per month (\$85,295.40 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.) In addition to the

If a QDRO awarded a fixed percentage of the participant's plan benefit to the alternate payee, the benefits payable to both the participant and the alternate payee would be reduced typically by the same percentage to reflect PBGC's guarantee limitations (as well as any additional benefits funded by plan assets and/or PBGC recoveries). For example, if a QDRO awarded an alternate payee 50% of a participant's \$1,000 monthly plan benefit and if the plan benefit is reduced by 10% as a result of PBGC's legal limitations (as well as plan funding and PBGC recoveries), then the participant and alternate payee will

If a QDRO awarding a fixed percentage of the participant's benefit to an alternate payee is a separate interest order, PBGC will reduce the plan benefit by the applicable title IV limits and pay a fixed percentage of the reduced plan benefit (determined on an actuarial basis) to the alternate payee. However, if the QDRO (shared payment or separate interest) awards a fixed dollar amount (e.g., \$500) of the participant's benefit to the alternate payee, then the participant's benefit payable by PBGC would be reduced by the fixed dollar amount (or actuarial equivalent thereof). In this case, PBGC would

For participants who have started receiving benefit payments or have properly chosen annuity benefit forms before their plans are trusteed, PBGC generally will pay benefits in the forms chosen. For participants

forms at the time their plans are trusteeed, 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 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

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), above, 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

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 to which the participant retains a separate interest (in the case of a separate interest

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

## Appendix B—Domestic Relations Orders Qualified Before PBGC Becomes Trustee

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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

When PBGC becomes trustee of a plan under which the plan administrator already has approved orders as QDROs, PBGC generally 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. If the Order was qualified in error by the prior plan administrator, the parties may be required to

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. (See Appendix A above.) If the participant or alternate payee desires that the guarantee

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

## Appendix C—QDRO Tax Rules

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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

Benefit payments made under a QDRO directly to an alternate payee who is a spouse or former spouse are taxable to that spouse or former spouse. However, the participant is taxed on payments made under a

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

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

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 an alternate payee under a QDRO. 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





## SECTION 1. IDENTIFICATION OF PLAN

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

## 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

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**

**[If the alternate payee has a**

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

**[If the payments are required to be sent to a**

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

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

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

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

## 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**

“Pro rata” means a proportionate allocation to two or more parts based on each part’s share of the whole.”

**SECTION 5. BENEFITS START**

The Alternate Payee’s commencement of benefits shall be **[such future date as the alternate payee elects/the date when PBGC will start payments to the Participant/another future date. This date must be the first day of a month]**, but not earlier than the later of the date PBGC receives this domestic relations order and the Participant’s annuity starting date.

**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

**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**

**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

**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

**SECTION 10. OTHER REQUIREMENTS**

Nothing in this Order shall

- a. To pay any benefits not permitted under
- b. To provide any type or form of benefit or any option not otherwise payable 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
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under a QDRO that is in effect prior to this
- e. To pay benefits to the Alternate Payee for any period before PBGC
- f. To change the benefit form or change the beneficiary of a joint-life annuity 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.

## PBGC Model Child Support QDRO Instructions

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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

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 PBGC Model QDRO Instructions, in Part II of this booklet 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



## SECTION 1. IDENTIFICATION OF PLAN

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

## 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

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**

## SECTION 3. SURVIVING SPOUSE RIGHTS OF ALTERNATE

**[Include either a., b., or both, as**

a. PBGC shall treat the Alternate Payee as the Participant’s spouse for **[none/all/X%]** of any qualified joint-and-survivor annuity (QJSA) that becomes payable under the Plan with respect to the Participant.

b. PBGC shall treat the Alternate Payee as the Participant’s spouse for **[none/all/X%]** of any qualified preretirement survivor annuity (QPSA) that becomes payable to the Participant under the Plan.

*[NOTE: When “X%” is used above, it refers to the portion of the survivor benefit awarded to the Alternate Payee – not the automatic survivor percentage of the plan’s QJSA or QPSA (which is typically 50%). Thus, if the Alternate Payee is awarded 40% of the QPSA benefit and the plan’s automatic survivor percentage for the QPSA is 50%, then the Alternate Payee will receive 20% of the Participant’s benefit as his/her survivor benefit.]*

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

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

## 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

## 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

## 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, the participant must elect the plan's automatic joint-and-survivor annuity (unless the alternate payee consents to the election of a different form of benefit). If the Participant dies while receiving payments, PBGC shall pay to the Alternate Payee the survivor benefit unless the Alternate Payee consented in writing to the Participant's

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

## 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

## SECTION 9. DEATH OF PARTICIPANT

### **[Include either a., b., or both, as**

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



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

**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

**SECTION 11. OTHER REQUIREMENTS**

Nothing in this Order shall

- a. To pay any benefits not permitted under
- b. To provide any type or form of benefit or any option not otherwise payable 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
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under a QDRO that is in effect prior to this
- e. To pay benefits to the Alternate Payee for any period before PBGC
- f. To change the benefit form or change the beneficiary of a joint-life annuity 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.

## PBGC Model Treat-as-Spouse QDRO Instructions

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

**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

### SECTION 1. IDENTIFICATION OF PLAN—SEE INSTRUCTIONS FOR SECTION 1 OF MODEL QDRO INSTRUCTIONS.

### SECTION 2. IDENTIFICATION OF PARTICIPANT AND ALTERNATE PAYEE(S)—SEE INSTRUCTIONS FOR SECTION 2 OF MODEL QDRO INSTRUCTIONS.

### SECTION 3. SURVIVING SPOUSE RIGHTS OF ALTERNATE PAYEE—SEE INSTRUCTIONS FOR SECTION 10 OF MODEL QDRO INSTRUCTIONS.

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

Because the alternate payee will receive a survivor annuity upon the death of the participant, this section refers to sections 3 and 7, which

### 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

### 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

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

#### **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

#### **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

#### **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

#### **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

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### **[If a contingent alternate payee is to be named in the PBGC Model Separate Interest**

*(NOTE: 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.)*

#### **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

(ii) If the Alternate Payee and the Contingent Alternate Payee die before commencing benefits, the separate interest shall revert to the

##### *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

##### *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

*[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

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**

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

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—How to Obtain Certain Participant Information from PBGC

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Participants' records in PBGC's possession are protected under the Privacy Act of 1974 (5 U.S.C.

§ 552a (2012) 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

- 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;
- Provide the participant's name (and the participant's social security
  
- 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

### **Disclosure Division**

Pension Benefit Guaranty Corporation  
445 12th Street, S.W.  
Washington, DC 20005-4026

If you have additional questions about this request, you can contact PBGC's Disclosure Division by calling 202-229-4040.

## Glossary

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The following terms may be useful in understanding this booklet. Many of the terms used in this booklet are defined by statute. In this Glossary, PBGC has provided simplified definitions that apply to the information discussed in this booklet. The glossary is intended to align with statutory definitions, where applicable. In the event a conflict with a statutory definition arises,

**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

**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

**Annuity Starting Date.** The date as of which a periodic (for example, monthly) annuity is calculated to commence (for example, the first of the month following attainment of age 65). Due to factors such as (but not limited to) routine administrative delay, the Annuity Starting Date (sometimes referred to as "actual retirement date" or "benefit commencement date") is NOT necessarily the same date on which a pension plan or PBGC sends

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

**Benefit.** A payment provided for under a

**Certain-and-Continuous Annuity.** An annuity that pays benefits over the longer of the recipient's life or a specified period (for example, for 60 months) commencing on the Annuity Starting Date.

**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

**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

**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

**Earliest PBGC Retirement Date (EPRD).** The “earliest PBGC retirement date” has a specific meaning for PBGC purposes and is defined in PBGC regulation a participant’s age as of their 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

**Early Retirement Benefit.** An annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before the plan’s normal retirement age and which is not payable on account of the disability of the participant. Not all plans offer an early

**Early Retirement Subsidy.** A portion of the early retirement benefit that is payable under the terms of the plan in addition to, or that is more valuable than, the actuarial equivalent of the benefit payable at the plan’s normal retirement age. Not all plans include an early retirement

**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

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

**Life Expectancy.** The number of years a person is expected to live, on

**Lump Sum.** A form of benefit payment in which the entire benefit is

**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

**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



**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

**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

**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

**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

**Qualified Domestic Relations Order (QDRO).** A QDRO is type of Domestic Relations Order (see definition above) which (i) gives an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under the plan and (ii) the plan and/or PBGC has satisfied certain legal and administrative requirements.

**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

**Qualified Preretirement Survivor Annuity (QPSA).** A QPSA is an annuity provided to a surviving spouse when a vested participant dies before receiving payment of their benefit. The annuity is generally payable 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). In PBGC-trusteed 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

**Spouse.** An individual under a formal relationship denominated as a marriage by State 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

**Subsidized Early Retirement Benefit.** An early retirement benefit that also includes an early retirement subsidy.

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

**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

### ***Additional Information and Support***

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**

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 (2012), as part of a collection of information from you related to a qualified domestic relations order. 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. PBGC uses the Social Security Numbers you provide to identify the participant's and the alternate payee's records within 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 PBGC some or all of this information in order to receive a benefit due to you as a participant or alternate payee). However, 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 PBGC, including a Social Security Number, may delay or prevent PBGC from paying a benefit to an alternate payee.

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 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 PBGC.

PBGC may also release information about you to appropriate law enforcement agencies when PBGC becomes aware of a possible violation of civil or criminal law. If PBGC, an employee of PBGC, the United States, or another agency of the United States, is involved in litigation, PBGC may provide relevant information about you to a court or other adjudicative body or to the Department of Justice when it represents PBGC. 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.



**Pension Benefit  
Guaranty Corporation**

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