

## **105 KAR 1:190. Qualified domestic relations orders.**

RELATES TO: KRS 16.505(36), (37), (38), 16.576, 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34), (35), (36), 78.545(26), 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 61.645(9)(e), 61.690

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.690 requires the retirement systems to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs.

### Section 1. Definitions.

- (1) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).
- (2) "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).
- (3) "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

Section 2. The provisions of this section shall only apply to QDROs that were approved by the retirement systems for enforcement prior to July 14, 2000. After the participant notifies the retirement system of the participant's requested effective retirement date, the retirement systems shall administer a QDRO that was entered prior to the participant's retirement as follows:

- (1) The retirement systems shall send the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.
- (2) The amount of the benefits payable pursuant to a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:
  - (a) The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's total service credit. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.
  - (b) If a lump sum payment equal to the balance of the participant's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the participant's account and the result paid to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid the alternate payee.
  - (c) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the participant's basic option.
  - (d) Service added for disability under KRS 61.605 or 16.582 shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph.
  - (e) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635, which do not provide lifetime benefits to a beneficiary and, if the participant is eligible, the ten (10) year certain option as provided by KRS 16.576(4).
  - (f) If the alternate payee predeceases the participant after the participant's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.
  - (g) The alternate payee of a QDRO approved for enforcement by the retirement systems prior to July 14, 2000, shall receive increases given recipients under KRS 61.691.

(3) If the participant dies prior to retirement and prior to the death of the alternate payee, the participant's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(4) If the death benefit is a refund of the participant's accumulated contributions and interest, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's account calculated in accordance with subsection (2) of this section.

(5) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial lump sum payment.

(6) If the alternate payee dies prior to the participant's death, retirement, or withdrawal of account, payment shall not be made to the alternate payee.

(7) When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share of the participant's contributions, service, and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

### Section 3.

(1) All sections of this administrative regulation, except for Section 2, shall only apply to QDROs approved for enforcement by the retirement systems on or after July 15, 2010.

(2) A QDRO may apply to any retirement systems administered by the Kentucky Retirement Systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member during the period of the marriage that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the retirement systems established by KRS 16.568, 61.663, and 78.652.

(3) A QDRO shall contain the following information:

(a) The participant's name;

(b) The participant's mailing address;

(c) The participant's Kentucky Retirement Systems member identification number or the participant's Social Security number;

(d) The alternate payee's name;

(e) The alternate payee's mailing address;

(f) The system or systems to which the QDRO applies;

(g) The amount or percentage to be paid to the alternate payee;

(h) When payments under the QDRO are to end;

(i) How the cost of living increase provided in KRS 61.691 is to be administered, if administration is not otherwise provided for by KRS 61.690; and

(j) All information required on the form that applies to the subject matter of the order:

1. Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property;

2. Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

3. Form 6436, Qualified Domestic Relations Order for Child Support;

4. Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

5. Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

### Section 4.

(1) The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate

payee for purposes of the QDRO. The participant shall provide the retirement systems with the following information:

- (a) The participant's and the alternate payee's Social Security numbers;
  - (b) The participant's and the alternate payee's dates of birth;
  - (c) Date of marriage;
  - (d) Date of divorce;
  - (e) The participant's and the alternate payee's mailing addresses; and
  - (f) The addresses of the participant's and the alternate payee's legal counsel, if any.
- (2) If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:
- (a) Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;
  - (b) Total number of months of service credit earned and purchased as of the effective date of the divorce or upon the request in each system in which the participant has service;
  - (c) The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;
  - (d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service; and
  - (e) The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service.
- (3) The retirement systems shall use the participant's final compensation as of the date of the divorce or upon the request and the service credit accrued by the participant during the marriage or upon the request when calculating the participant's projected basic monthly retirement allowance and the projected actuarial refund or lump-sum refund payment.
- (4) If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:
- (a) Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;
  - (b) Total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and
  - (c) Total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.
- (5) The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by submitting a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information.
- (6) If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required:
- (a) The participant shall submit to the systems an additional signed request for information in writing; or
  - (b) The alternate payee shall submit to the systems an additional request and an attached court issued subpoena or order compelling the release of the requested information.

(c) Requests for information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661.

#### Section 5.

(1) A QDRO shall be on the form incorporated by reference in this administrative regulation that applies to the subject matter of the order.

(2) A QDRO shall be signed by the judge of a court with jurisdiction over the case or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(3) A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.

(4) The participant, alternate payee, or their legal counsel shall submit a copy of the entered and certified QDRO to the retirement systems.

(5)

(a) The participant, alternate payee, or their legal counsel shall not submit a QDRO that is before an appellate court and is not final.

(b) The retirement systems shall not have responsibility or liability for payments made pursuant to a QDRO submitted in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

(6) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee with the QDRO. The retirement systems shall not review the QDRO unless the fee is submitted with the QDRO.

(a) A QDRO shall provide who shall pay the fee, including if the fee is to be divided between the participant and the alternate payee. Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall not be a fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis, then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems with the entered and certified QDRO.

(7) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected QDRO. If a corrected QDRO is not submitted within ninety (90) days of the date of notification then the participant, alternate payee, or their legal counsel shall be required to submit an additional nonrefundable fifty (50) dollar fee with a QDRO submitted after ninety (90) days.

#### Section 6.

(1) The retirement systems shall determine if the QDRO is complete and qualifies as a QDRO pursuant to KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the retirement systems has determined that it complies with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation and has approved the QDRO for enforcement.

(b) The retirement systems shall provide notification of its determination within ninety (90) days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.

- (c) The retirement systems shall provide notification of its determination within forty-five (45) days of the submission of the QDRO after July 15, 2011.
- (2) The retirement systems shall notify the participant; the participant's legal counsel, if known; the alternate payee; and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.
- (a) If the participant has not yet retired, the retirement systems shall place the QDRO on file until the participant files a notification of retirement or an application for refund.
- (b) If the participant has retired, the retirement systems shall begin to enforce the QDRO the month after it is approved for enforcement by the retirement systems.
- (3) The alternate payee shall submit a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO. If the alternate payee has not submitted a completed Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the retirement systems shall:
- (a) Segregate and hold the alternate payee's payments;
- (b) Hold the segregated amount for a period of no more than eighteen (18) months, with the period beginning on the date the first payment was required by the QDRO approved for enforcement by the retirement systems;
- (c) Pay the segregated amount to the alternate payee, if a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted within the eighteen (18) month period;
- (d) Pay the segregated amount to the participant, if a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is not submitted within the eighteen (18) month hold period; or
- (e) Apply the QDRO prospectively, if after the eighteen (18) month hold period expires a valid Form 6130, Authorization for Deposit of Retirement Payment, or a Form 6135, Payment of Retirement Payment by Check, is submitted.
- (4) If the retirement systems determines that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall notify the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that:
- (a) The retirement systems has determined the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation;
- (b) The reason for the determination that the QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation; and
- (c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation.

#### Section 7.

- (1) If a QDRO approved for enforcement and on file at the retirement systems is amended or terminated, the participant, alternate payee, or their legal counsel shall submit the amended entered and certified QDRO or an entered and certified order terminating the QDRO to the retirement systems as provided in Section 5 of this administrative regulation.
- (2) The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The retirement systems shall not review the amended QDRO or

order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis, then the retirement systems shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be submitted to the retirement systems with the entered and certified QDRO.

(b) There shall not be a fee required for submission of a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The retirement systems shall review the amended QDRO using the same procedures found in Section 6 of this administrative regulation.

(4) If the retirement systems determines that the amended QDRO does not comply with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation or that the order terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel shall have ninety (90) days from the date the retirement systems' notification of the deficiency was mailed as provided in Section 6(4) of this administrative regulation to submit a corrected amended QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a corrected order terminating the QDRO is not submitted within ninety (90) days of the date of notification, then the participant, alternate payee, or their legal counsel shall be required to submit an additional nonrefundable twenty-five (25) dollar fee with an amended QDRO or order terminating the QDRO that is submitted after ninety (90) days.

(5) An amended QDRO or an order terminating a QDRO approved by the retirement systems shall only be administered prospectively.

Section 8. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.

Section 9.

(1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, unless the QDRO is initially submitted following the participant's retirement date.

(2) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590 or, if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the retirement systems. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.

Section 10. The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(1) A monthly dollar amount if the participant elects a monthly retirement benefit or a one (1) time lump sum dollar amount if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the participant's retirement, or a lump sum

dollar amount from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;

(2) A percentage equal to one-half of the participant's basic monthly retirement benefit attributable to any service credit earned or purchased during the marriage pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which shall be determined as follows:

(a) The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;

(b) The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and

(c) The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or

(3) An alternative percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump-sum payment pursuant KRS 61.625, in the system or systems affected by the QDRO.

#### Section 11.

(1) The provisions of this section shall only apply to participants who were participating prior to August 1, 2004. If a participant who was participating prior to August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a) or 61.605(1) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)

(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued.

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated.

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

#### Section 12.

(1) The provisions of this section shall only apply to participants whose participation began on or after August 1, 2004. If a participant whose participation began on or after August 1, 2004, and who has a QDRO on file at the retirement systems is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 10(1) of this administrative regulation, the retirement system shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 10(2) and (3) of this administrative regulation, the retirement systems shall use the participant's benefit pursuant to KRS 16.582(5)(b) or 61.605(2) when calculating the amount the alternate payee is due under the QDRO on file at the retirement systems.

(2)

(a) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant is not eligible to receive early retirement benefits, the alternate payee's payment shall be discontinued.

(b) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615, the alternate payee's payment shall be reinstated.

(d) If the participant later begins receiving early retirement benefits while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

Section 13. A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially submitted to the retirement system following the participant's effective retirement date, shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

#### Section 14.

(1) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee.

(2) The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) As a monthly dollar amount;

(b) As a percentage of the participant's selected monthly retirement benefit, which shall be determined as follows:

1. The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;

2. The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; and
  3. The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or
- (c) An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO.

#### Section 15.

- (1) If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:
- (a) Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;
  - (b) Hold the segregated amount for a period of no more than the eighteen (18) month hold period. The eighteen (18) month hold period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;
  - (c) If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;
  - (d) If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the participant; or
  - (e) If after the eighteen (18) month hold period a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.
- (2) The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.

#### Section 16.

- (1) A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.
- (2) The monthly dollar amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.
- (3) The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).
  - (a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement".
  - (b) The participant's name and Social Security number shall be noted on the payment.

(4) An alternate payee listed on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.

(5) The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.

#### Section 17.

(1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

(2) The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(3) The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.

#### Section 18.

(1) The participant shall be responsible for notifying the retirement systems in writing of an event that causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

(2) The retirement systems shall hold any payments due the alternate payee pending submission of proof of the event that causes payments to the alternate payee to end is provided by the participant beginning the month after the retirement systems' receipt of the participant's written notification.

(3) The participant shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as proof of the event that causes the participant's alimony or maintenance to end.

(4) The participant shall submit a copy of the alternate payee's death certificate or other reliable documentation as proof of the event that causes the participant's payments pursuant to the division of marital property to end.

(5) The participant shall not be required to submit written notification if the QDRO specifies the number of months of payments.

(6) If proof is not submitted within ninety (90) days of the written notification to the retirement systems, the payments being held shall be released to the alternate payee.

(7) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

#### Section 19.

(1) The participant shall be responsible for notifying the retirement systems in writing of an event that causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)

(a) If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an entered and certified order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that

payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.

(b)

1. The retirement systems shall segregate and hold the payments due to the alternate payee under a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant submits an order changing the custody of the child to someone other than the alternate payee, a copy of the child's marriage certificate, a letter from the child's high school indicating the child's graduation date, the child's birth certificate, an order of emancipation of the minor child, or the child's death certificate.

2. If the QDRO for child support is for the support of more than one (1) child, the retirement systems shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not submit an entered and certified order amending or terminating the QDRO for child support from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within ninety (90) days of the participant's submission as provided in paragraph (b) of this subsection, the payments being held shall be released to the alternate payee.

(3) The retirement systems shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, or the court order that causes payments to the alternate payee to end or be amended.

#### Section 20.

(1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the retirement systems.

(3) If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the retirement systems.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the retirement systems.

(5) If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.

(6)

(a) The retirement systems shall not administer a QDRO if enforcement of the QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the retirement systems. The retirement systems shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

(b) The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost of living increase provided pursuant to KRS 61.691.

Section 21. The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit

subject to the QDRO becomes payable. The retirement systems shall not have a duty or obligation to search for or locate an alternate payee.

Section 22. A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.

Section 23.

(1) If the participant's retirement benefit is corrected pursuant to KRS 61.685, the alternate payee's payment shall also be corrected.

(2) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall withhold the amount of the overpayment from the alternate payee's payment.

(3) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685, the retirement systems shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

Section 24.

(1) Any person or party who attempts to make the retirement systems a party to a domestic relations action regarding a QDRO or who requests a subpoena be issued for the personal appearance of a representative of the retirement systems to appear at a deposition or in a court or administrative proceeding regarding a QDRO shall reimburse the retirement systems for the travel expenses and services of the retirement systems' representative, or representatives, and the retirement systems' legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the retirement systems' personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the retirement systems' employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office;

(e) The retirement systems costs and legal fees; and

(f) Lodging expenses, if necessary.

(2) The retirement systems shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment for the estimated expenses before the date of appearance ordered in the subpoena.

(b) The retirement systems shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 25. Neither the retirement systems nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 26. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004;

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011;

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", May 2011;

(d) Form 6436, "Qualified Domestic Relations Order for Child Support", May 2011;

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", May 2011;

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", May 2011;

(g) Form 6130, "Authorization for Deposit of Retirement Payment", April 2010;

(h) Form 6135, "Payment of Retirement Payment by Check", February 2002; and

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", August 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

(18 Ky.R. 929; eff. 11-8-1991; Am. 21 Ky.R. 1521; 1881; eff. 2-8-1995; 37 Ky.R. 945; 11-5-2010; 38 Ky.R. 494; eff. 9-28-2011; TAm eff. 6-11-2019; Crt eff. 6-11-2019.)