

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505, 16.576, 16.645(5), 16.568, 16.577, 16.578, 16.582, 16.583, 61.505, 61.510, 61.542, 61.559, 61.580, 61.583, 61.590, 61.595, 61.597, 61.600, 61.605, 61.610, 61.615, 61.621, 61.625, 61.635, 61.637, 61.640, 61.661, 61.663, 61.690, 61.691, 78.510, 78.545, 78.640, 78.652, 78.5510, 78.5512, 78.5514, 78.5516, 78.5518, 78.5522, 78.5524, 78.5526, 78.5528, 78.5532, 78.5540, 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 16.645, 61.505(1)(g), 61.690, 78.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.645, 61.690(3)(b), and 78.545 require the Kentucky Retirement Systems and the County Employees Retirement System 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) "Basic retirement allowance" means the basic payment option as defined by KRS 61.542(5)(f) and 78.545.
- (2) "Benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16).
- (3) "Date of divorce" means the date the decree of dissolution of marriage is entered by a court of competent jurisdiction.
- (4) "Effective retirement date" means the first date upon which a member's early, normal, or disability retirement benefits began or will begin.
- (5) "Marital Service" means the amount of service earned and purchased during the marriage.
- (6) "Unreduced retirement benefit" means the full retirement allowance for which a participant is entitled in accordance with KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516.

Section 2. Information Requests.

- (1) If information is necessary for the Court to calculate the amount due to the alternate payee for the purposes of a QDRO, the participant shall complete, sign, and file a valid Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order, to obtain the needed information.
- (2) In response to a filed valid Form 6433, if the participant has not yet retired, the agency shall provide as of the date of the divorce indicated on the QDRO, or if the date of divorce is not provided the last date contributions were reported, the participant's:
 - (a) Accumulated account balance during the marriage in each of the systems in which the participant has marital service;
 - (b) Total number of months of service credit earned and purchased in each of the systems in which the participant has service;
 - (c) The number of months of service credit earned and purchased during the marriage in each of the systems in which the participant has marital service;
 - (d) The hypothetical monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516 the participant would receive beginning on the date the participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical monthly retirement allowance shall be based on:
 1. The participant's final compensation and service credit; or
 2. The participant's accumulated account balance;
 - (e) The hypothetical partial lump sum payment option without survivor rights with a one (1) time lump-sum payment equal to twelve (12) monthly retirement allowances and the reduced ongoing monthly retirement allowance pursuant to KRS 61.635(12) and 78.545 that the participant would receive beginning on the date the participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical partial lump sum payment option and reduced ongoing monthly retirement allowance shall be based on:
 1. The participant's final compensation and service credit; or
 2. The participant's accumulated account balance; and
 - (f) The hypothetical actuarial equivalent refund payment or accumulated account balance refund payment the participant would receive, broken down by each of the systems in which the participant has marital service, when the participant is eligible for an unreduced retirement benefit based on:
 1. The final compensation and service credit; or
 2. The participant's accumulated account balance.
- (3) In response to a filed valid Form 6433, if the participant retired prior to the effective date of the divorce indicated on the QDRO, the agency shall provide the participant's:
 - (a) Current monthly retirement benefit in each of the systems 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 of the systems from which the participant is receiving a monthly retirement benefit; and
 - (c) Total number of months of service credit in each of the systems from which the participant is receiving a monthly retirement benefit.
- (4)
 - (a) 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 completing and filing a valid 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.
 - (b) The agency shall respond to a valid Form 6433 filed in accordance with this subsection in the same manner as indicated in subsections (2) or (3) of this section as applicable.
- (5)
 - (a) If information other than the information supplied by the agency in accordance with subsections (2) through (3) of this section is required:
 1. The participant shall file an additional signed request for information in writing;
 2. The alternate payee shall file an additional signed request for information in writing, and an attached court issued subpoena or order compelling the release of the requested information; or
 3. Legal counsel shall file an additional signed request for information in writing, and documentation that he or she represents the participant or alternate payee, as applicable. An alternate payee's legal counsel shall also file a court issued subpoena or order compelling the release of the requested information.

(b) Requests for information other than the information supplied by the agency in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661 and 78.545.

Section 3. QDROs prior to July 14, 2000. The provisions of this section shall only apply to QDROs that were approved for enforcement by the agency prior to July 14, 2000. After the participant notifies the agency of his or her requested effective retirement date, the agency shall administer a valid QDRO approved by the agency that was entered prior to the participant's effective retirement date as follows:

(1) The agency shall provide 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 valid QDRO shall be determined as follows:

(a) The percentage of benefit due to the alternate payee shall be computed based on the following table:

$$\frac{\% \text{ allocated to Alternate Payee pursuant to QDRO}}{\text{X}} \times \frac{\text{marital service per QDRO}}{\text{Participant's total service credit}} = \frac{\text{Percentage of benefit due to the alternate payee}}{\text{alternate payee}}$$

(b) If a lump sum payment equal to the balance of the participant's accumulated account balance is to be made, the percentage due to the alternate payee as calculated by paragraph(a) of this subsection shall be multiplied by the participant's accumulated account balance 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 payment is to be made, the percentage due to the alternate payee, as calculated by paragraph(a) of this subsection, shall be multiplied by the participant's basic retirement allowance and the result shall be paid monthly to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.

(d) Service credit added for disability retirement benefits under KRS 16.582, 61.600, 61.605, 78.5522, or 78.5524 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:

1. Shall be based on the alternate payee's life expectancy;

2. Shall include only the payment options described in KRS 61.635 and 78.545, which do not provide lifetime benefits to a beneficiary; and

3. If the participant is eligible, shall include the ten (10) year certain option as provided by KRS 16.576(4).

(f) The alternate payee of a QDRO approved for enforcement by the agency prior to July 14, 2000, shall receive increases given recipients under KRS 61.691 and 78.5518.

(3)

(a) If the participant dies prior to his or her effective retirement date 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 participant's beneficiary.

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

2. If the death benefit is calculated under KRS 16.578, 61.640, or 78.5532, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial equivalent refund.

(b)

1. If a participant with a pre-retirement QDRO dies after his or her effective retirement date and prior to the death of the alternate payee, there shall be no change to the alternate payee's benefits.

2. If a participant with a post-retirement QDRO dies prior to the death of the alternate payee, the QDRO on file shall be void and no further payment shall be made to the alternate payee.

(4)

(a) If the alternate payee predeceases the participant after the participant's effective retirement date, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.

(b) If the alternate payee predeceases the participant prior to the participant's effective retirement date or withdrawal of account, the QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.

(5)

When benefits become payable to the alternate payee, the agency shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share determined pursuant to subsection (2) of this section. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

Section 4. QDROs On or After July 15, 2010.

(1) Section 4 through Section 20 of this administrative regulation shall only apply to QDROs approved for enforcement by the agency on or after July 15, 2010.

(2) A QDRO may apply to any of the systems in which the participant has marital service that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the excess benefit plans established by KRS 16.568, 61.663, and 78.652.

(3) A valid QDRO shall be complete and contain all information required on the form that applies to the subject matter of the order:

(a) Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed pre-retirement;

(b) Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed post-retirement;

(c) Form 6436, Qualified Domestic Relations Order for Child Support, for a QDRO concerning the order of child support;

(d) Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, for a QDRO concerning child support when completed by an Administrative Agency with the statutory authority to complete it; or

(e) Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance, for a QDRO concerning alimony or maintenance.

Section 5. Pre-retirement QDROs for the Division of Marital Property.

(1) Only a QDRO for the purpose of the division of marital property shall be filed prior to a participant's effective retirement date.

(2) A QDRO issued for purpose of the division of the participant's retirement account, pursuant to a divorce entered prior to the participant's effective retirement date, shall be filed prior to retirement on a valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. A Form 6434 entered or initially filed after the participant's retirement date shall be in compliance with Section 6 of this administrative regulation.

(3) 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 and 78.545, 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 agency.

- (a) 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 on the Form 6434.
- (b) If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.

(4)

(a) A Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, filed on or after July 1, 2024 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 dollar amount;
- 2. A percentage of the participant's marital service; or
- 3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(b) If the court specifies a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

- 1. A monthly dollar amount if the participant elects a monthly retirement allowance;
- 2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545;
- 3. A lump-sum dollar amount from participant's refund of his or her accumulated account balance if the participant elects to terminate his membership pursuant to KRS 61.625 and 78.545; and
- 4. A one (1) time lump-sum payment and a monthly dollar amount if the participant elects a partial lump-sum payment option pursuant to KRS 61.635(12) and 78.545.

(c)

1. If the court specifies that a percentage of the participant's marital service be paid to the alternate payee, the percentage shall be determined based on the following table:

$$\left[\frac{\text{Months of marital service in which participant was a contributing member of the system affected by the QDRO}}{\text{Participant's total service credit used to calculate the retirement payment option}} \right] \times 100 \div 2 = \text{Percentage benefit due alternate payee}$$

- 2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO;
- 3. The participant's total service credit shall be determined by the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and 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 the accumulated account balance; and

4. To determine the amount due to the alternate payee, the above percentage shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund;
- c. The participant's refund of his or her accumulated account balance; or
- d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(d)

1. If the court specifies that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:

- a. Retirement allowance amount elected at retirement;
- b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or
- c. Refund of his or her accumulated account balance pursuant KRS 61.625 and 78.545.

2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:

- a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
- b. The participant's actuarial equivalent refund;
- c. The participant's refund of his or her accumulated account balance; or
- d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(5)

(a) If a Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, is filed prior to July 1, 2024 and the participant elects to receive a partial lump sum payment option pursuant to KRS 61.635(12) and 78.545, the alternate payee:

- 1. Shall receive a dollar amount or percentage applied to the participant's basic monthly retirement allowance; and
- 2. Shall not receive a portion of the partial lump-sum payable to the participant.

(b) A Form 6434 filed prior to July 1, 2024 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 dollar amount;
- 2. A percentage of the participant's marital service; or
- 3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(c) If the court specifies a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

- 1. A monthly dollar amount if the participant elects a monthly retirement allowance, including the reduced monthly retirement allowance payable under a partial lump-sum option pursuant to KRS 61.635(12) and 78.545;
- 2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545; and
- 3. A lump-sum dollar amount from participant's refund of his or her accumulated account balance if the participant elects to terminate his membership pursuant to KRS 61.625 and 78.545.

- (d)
1. If the court specifies that a percentage of the participant's marital service be paid to the alternate payee, the percentage shall be determined based on the following table:

$$\left[\frac{\text{Months of marital service in which participant was a contributing member of the system affected by the QDRO}}{\text{Participant's total service credit used to calculate the retirement payment option}} \right] \times 100 \div 2 = \text{Percentage benefit due alternate p}$$

2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO;
3. The participant's total service credit shall be determined by the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and 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 the accumulated account balance; and
4. To determine the amount due to the alternate payee, the above percentage shall be applied to the following as appropriate:
 - a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
 - b. The participant's actuarial equivalent refund; or
 - c. The participant's refund of his or her accumulated account balance.

- (e)
1. If the court specifies that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:
 - a. Retirement allowance amount elected at retirement;
 - b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or
 - c. Refund of his or her accumulated account balance pursuant KRS 61.625 and 78.545.
 2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:
 - a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;
 - b. The participant's actuarial equivalent refund; or
 - c. The participant's refund of his or her accumulated account balance.

Section 6. Post Retirement QDRO for the Division of Marital Property.

- (1) 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 filed following the participant's effective retirement date, shall be filed on a valid Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.
- (2) 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. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:
 - (a) A monthly dollar amount;
 - (b)
 1. A percentage of the participant's selected monthly retirement benefit attributable to the marital service, which shall be determined based on the following table:

$$\left[\frac{\text{Months of marital service in which participant was a contributing member of the system affected by the QDRO}}{\text{Participant's total service credit used to calculate the retirement payment option}} \right] \times 100 \div 2 = \text{Percentage benefit due alternate pa}$$

2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO; or
- (c) An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO.

Section 7. Child Support QDROs.

- (1) A QDRO issued for purposes of payment of child support shall be filed on:
 - (a) A valid Form 6436, Qualified Domestic Relations Order for Child Support entered by a court of competent jurisdiction; or
 - (b) A valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, completed by an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.
- (2) The QDRO shall specify the monthly dollar amount of child support to be paid.
- (3) The agency 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) The agency shall only 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 is retired and is receiving a monthly retirement benefit.

Section 8. Alimony or Maintenance QDROs.

- (1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be filed on a valid Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance completed by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.
- (2) The QDRO shall specify the monthly dollar amount or percentage of the participant's monthly retirement allowance to be paid to the alternate payee for alimony or maintenance.

(3) The agency shall only accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant is retired and is receiving a monthly retirement allowance.

Section 9. Filing a QDRO.

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

(a) A QDRO shall be signed by the judge of a court with jurisdiction over the case, and entered and certified by the Clerk of the Court, except as provided in paragraph (b) of this subsection.

(b) The Form 6437, Qualified Domestic Relations Order for Payment of Child Support by an Administrative Agency, shall be signed by the head of the administrative agency, or his or her designee, with statutory authority to issue a QDRO.

(2) A valid copy of the QDRO that meets the requirements of subsection (1) of this section shall be filed.

(3)

(a) No one shall file a QDRO that is before an appellate court and is not final.

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

(4) A fee of fifty (50) dollars shall be submitted by 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 a filed QDRO, except as provided in paragraph (b) or (c) of this subsection. The agency shall not review the QDRO to approve for enforcement unless the fee is submitted with the QDRO.

(a) 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 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 agency shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the valid entered and certified QDRO.

(5)

(a) If the agency determines that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation, the participant, alternate payee, or their legal counsel shall have until the end of day ninety (90) calendar days from the date the agency's notification of the deficiency was provided, as detailed in Section 11(4) of this administrative regulation, to file a corrected QDRO without an additional fee.

(b) If a corrected valid QDRO is not filed by the end of day ninety (90) calendar days from the date of notification, then an additional nonrefundable fifty (50) dollar fee with any new or corrected QDRO filed after the ninety (90) calendar days shall be required.

(c) If the participant requests and receives a refund of his or her accumulated account balance during the ninety (90) calendar day period described in this subsection, and a corrected QDRO is filed after the participant has received a refund of his or her accumulated account balance, then the QDRO shall not be valid and enforceable by the agency.

Section 10. Deposit of Fees. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580 and 78.640.

Section 11. Determining if a QDRO is Approved for Enforcement.

(1) The agency shall determine if the QDRO is complete and qualifies as a valid QDRO pursuant to KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation.

(a) A QDRO shall not be effective until the agency has determined that it complies with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation, and approves the QDRO for enforcement.

(b) The agency shall provide notification of its determination by the end of day forty-five (45) calendar days from the date the QDRO is filed on or after July 15, 2011.

(2) The agency shall provide notification to 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 agency shall place an otherwise valid and approved QDRO on file until the participant files a notification of retirement or an application for a refund of his or her accumulated account balance.

(b) If the participant has retired, the agency shall begin to enforce the QDRO the month after it is approved for enforcement by the agency.

(3)

(a) Except as provided in paragraph (c) of this subsection, the alternate payee shall complete and file a valid Form 6130, Authorization for Deposit of Retirement Payment, or if he or she does not have an account with a financial institution, a valid Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO.

(b) If the alternate payee has not filed a valid Form 6130, or a valid Form 6135, by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the agency shall segregate and hold the alternate payee's payments for a period of no more than eighteen (18) calendar months, with the period beginning on the first day of the month following the date the first payment was required by the QDRO approved for enforcement by the agency. The agency shall:

1. Pay the segregated amount to the alternate payee, if a valid Form 6130, or a valid Form 6135 is filed within the eighteen (18) calendar month hold period;

2. Pay the segregated amount to the participant, if a valid Form 6130, or a valid Form 6135 is not filed within the eighteen (18) calendar month hold period; or

3. Apply the QDRO prospectively only, if after the eighteen (18) calendar month hold period expires a valid Form 6130, or a valid Form 6135, is filed.

(c) An alternate payee listed on a valid Form 6436, Qualified Domestic Relations Order for Child Support, or a valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not file a Form 6130 or a Form 6135.

(4)

(a) If the agency determines that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation, the agency shall provide written notification to the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, detailing:

1. The agency has determined the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation;

2. The reason for the determination that the QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), or this administrative regulation; and

3. The changes necessary to make the QDRO in compliance with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation.

(b) If the sole deficiency is that the QDRO is not entered or certified, the agency shall segregate and hold any payments due the alternate payee pursuant to the QDRO for up to eighteen (18) calendar months, with the period beginning the first day of the month after the date the QDRO was found to be noncompliant in accordance with this subsection.

1. If within the eighteen (18) calendar month hold period, the entered and certified QDRO is filed, the agency shall pay the segregated amount to the alternate payee; or
2. When the eighteen (18) calendar month hold period ends, if the entered and certified QDRO is not on file, the agency shall pay the segregated amount to the participant.
3. If an entered and certified QDRO is filed after the eighteen (18) calendar month hold period expires, the QDRO shall only be applied prospectively.

Section 12. Multiple QDROs.

- (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 agency.
- (3) If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the agency.
- (4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the agency.
- (5) The agency 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 agency. The agency shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

Section 13. Multiple Retirement Accounts. For participants who retired and subsequently reemployed with an employer in a regular full-time position prior to September 1, 2008, new QDROs affecting the participant's retirement account shall be administered as follows:

- (1) A valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, that is filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has not retired.
- (2) Any of the following valid QDROs that are filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has retired:
 - (a) Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;
 - (b) Form 6436 Qualified Domestic Relations Order for Child Support;
 - (c) Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or
 - (d) Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 14. Amending or terminating QDRO's.

- (1) If a QDRO approved for enforcement by the agency is amended or terminated, the participant, alternate payee, or their legal counsel shall file:
 - (a) The amended entered and certified valid QDRO as provided in Section 9 of this administrative regulation; or
 - (b) The entered and certified order from a court of competent jurisdiction terminating the QDRO.
- (2) Except as provided in paragraph (a) or (b) of this subsection, a fee of twenty-five (25) dollars shall be submitted by certified check or money order made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The agency 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 agency shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed with the entered and certified valid QDRO.
 - (b) There shall not be a fee required for 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 agency shall review the amended QDRO using the same procedures found in Section 11 of this administrative regulation.
- (4) If the agency determines that the amended QDRO does not comply with KRS 16.645, 61.690, 78.545, 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 until the end of day ninety (90) calendar days from the date of the agency's notification of the deficiency, as prescribed in Section 11(4) of this administrative regulation, was provided to file a corrected amended valid QDRO or a corrected order terminating the QDRO. If a corrected amended valid QDRO or a corrected order terminating the QDRO is not filed by the end of day ninety (90) calendar days from the date of notification, then an additional nonrefundable twenty-five (25) dollar fee shall be submitted with an amended valid QDRO or order terminating the QDRO that is filed after the ninety (90) calendar day period.
- (5) An amended valid QDRO or an order terminating a QDRO approved by the agency shall only be administered prospectively.

Section 15. Disability retirement benefits for members participating prior to August 1, 2004.

- (1) The provisions of this section shall only apply to participants who were participating prior to August 1, 2004.
- (2) If a participant with a QDRO on file is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, 61.621, 78.545, 78.5522, or 78.5524, 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 5(5)(a), Section 7, or Section 8 of this administrative regulation, the agency 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 5(5)(b)-(c) or Section 8 of this administrative regulation, the agency shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a), 61.605(1), 78.5522(6), or 78.5524(5) when calculating the amount the alternate payee is due under the QDRO on file at the agency.
- (3) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610, 61.615, 78.5526, and 78.5528, then:
 - (a) If the participant does not begin receiving early retirement benefits, the alternate payee's payment shall be discontinued.
 - (b) If 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 and 78.5528, the alternate payee's payment shall be reinstated.
 - (d) If the participant later begins receiving early retirement benefits, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.
 - (e) If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a)-(b) of this section.

Section 16. Disability retirement benefits for members participating on or after August 1, 2004.

- (1) The provisions of this section shall only apply to participants whose participation began on or after August 1, 2004.
- (2) If a participant who has a QDRO on file is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, 61.621, 78.545, 78.5522, or 78.5524 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 5(5)(a), Section 7, or Section 8 of this administrative regulation, the agency 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 5(5)(b)-(c) or Section 8 of this administrative regulation, the agency shall use the participant's benefit pursuant to KRS 16.582(5)(b) and (c), 61.605(2), 78.5522(6)(b) and (c), or 78.5524(5)(b) and (c) when calculating the amount the alternate payee is due under the QDRO on file.

(3) If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610, 61.615, 78.5526, and 78.5528, then:

(a) If the participant does not begin receiving early retirement benefits, the alternate payee's payment shall be discontinued.

(b) If 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 and 78.5528, the alternate payee's payment shall be reinstated.

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

(e) If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a)-(b) of this section.

Section 17. Events That End or Amend a QDRO for Division of Marital Property, Alimony, or Maintenance.

(1) The participant, the alternate payee, or legal counsel for either party shall be responsible for notifying the agency 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 in accordance with KRS 16.645, 61.690(7), and 78.545.

(2) In the event of the participant or alternate payees' death, the QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.

(3) The agency shall segregate and hold any payments due the alternate payee beginning the month after the agency's receipt of the notification until one (1) of the following occurs:

(a) The participant, alternate payee, or either party's legal counsel files proof of the event that causes payments to the alternate payee to end; or

(b) The agency independently verifies the event that causes payments to the alternate payee to end.

(4) As applicable, the participant, alternate payee, or either party's legal counsel shall file a copy of the alternate payee's marriage certificate, the alternate payee's or participant's death certificate, or other reliable documentation as determined by the agency as proof of the event that causes payment to the alternate payee to end.

(5) If a QDRO specifies the number of months of payments, payment to the alternate payee shall cease after the designated number of months expire, and a notice of the exhaustion of payments shall not be required.

(6) If proof is not filed or obtained by the end of day ninety (90) calendar days from the notification to the agency, the payments being held shall be released to the alternate payee.

(7) The agency 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 18. Event That Ends or Amends a QDRO for Child Support.

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

(2)

(a) The agency shall segregate and hold the payments due to the alternate payee under a valid QDRO for child support if one (1) of the following is filed:

1. An order changing the custody of the child to someone other than the alternate payee;

2. A copy of the child's marriage certificate;

3. A letter from the child's high school indicating the child's graduation date, if the child is age of eighteen (18) or older;

4. The child's birth certificate indicating the child is age eighteen (18) or older;

5. An order of emancipation of the minor child; or

6. The child's death certificate.

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

(c) If the participant does not file documentation to amend or terminate the QDRO for child support in accordance with Section 14 of this administrative regulation by the end-of-day ninety (90) calendar days from the participant's submission as provided in paragraph

(a) of this subsection, the payments being held shall be released to the alternate payee.

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

Section 19. Correction/change to Retirement Benefits.

(1) If the participant's retirement benefit is corrected pursuant to KRS 61.685 and 78.545, the alternate payee's payment shall also be corrected.

(a) If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685 and 78.545, the agency shall withhold the amount of the overpayment from the alternate payee's payment.

(b) If the alternate payee was underpaid because of the error that is being corrected pursuant to KRS 61.685 and 78.545, the agency shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

(2) After the effective date of any cost-of-living increase provided pursuant to KRS 61.691 and 78.5518, the agency shall recalculate the amounts due under a QDRO being administered by the agency.

(3) Payment to the alternate payee shall not change as a result of a change in the participant's retirement benefits as provided in KRS 61.542(5)(b) and 78.545.

Section 20. Alternate Payee's Contact Information. The alternate payee shall be responsible for notifying the agency in writing of any change in mailing address. The agency 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 agency shall not have a duty or obligation to search for or locate an alternate payee.

Section 21. Hospital and Medical Insurance. A QDRO shall not provide that the alternate payee be eligible to enroll in the hospital and medical insurance plan administered by the agency.

Section 22. Agency Subpoena or As a Party to a Domestic Relations Action.

(1) Any person or party who attempts to make the agency 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 agency to appear at a deposition or in a court or administrative proceeding regarding a QDRO, shall reimburse the agency for the travel expenses and services of the agency's representative, or representatives, and the agency's legal counsel, as an administrative fee including:

- (a) The Internal Revenue Service standard mileage rate;
- (b) Parking and tolls;
- (c) Meals if the agency's 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 agency's 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 agency's costs and legal fees; and
- (f) Lodging expenses, if necessary.

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

- (a) The person or party shall remit payment via a certified check or money order for the estimated expenses made payable to the Kentucky State Treasurer before the date of appearance ordered in the subpoena.
- (b) The agency 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 23. Agency Liability. Neither the agency 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 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", March 2024;
- (b) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", March 2024;
- (c) Form 6436, "Qualified Domestic Relations Order for Child Support", March 2024;
- (d) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", March 2024;
- (e) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", March 2024;
- (f) Form 6130, "Authorization for Deposit of Retirement Payment", June 2023;
- (g) Form 6135, "Payment of Retirement Payment by Check", June 2023; and
- (h) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", March 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: March 21, 2024

FILED WITH LRC: March 25, 2024 at 11:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 2024 at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.