

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:380. Qualified domestic relations orders for TRS 4 members.

RELATES TO: KRS 161.220, 161.633, 161.634, 161.635, 161.636, 161.700, 161.716, 403.190, 26 U.S.C. 414(P)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of TRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants in the retirement system. This administrative regulation establishes these requirements for TRS 4 members in lieu of the provisions of 102 KAR 1:320.

Section 1. Definitions.

- (1) "Alternate payee" is defined by KRS 161.220(26).
- (2) "Benefits" means a monthly service or disability retirement allowance provided from the foundational benefit component established under KRS 161.633 or 161.634 (foundational benefit), annuities or disbursements from the supplemental benefit component established under KRS 161.635 or 161.636 (supplemental benefit), or refund payable at the request of a participant covered by TRS who terminates employment in a TRS covered position prior to becoming eligible to receive a retirement allowance.
- (3) "Member" is defined by KRS 161.220(4).
- (4) "Participant" is defined by KRS 161.220(24).
- (5) "Qualified domestic relations order" or "QDRO" is defined by KRS 161.220(25).
- (6) "TRS 4 members" means those individuals whose earliest effective date of membership in the retirement system begins on or after January 1, 2022.

Section 2.

(1) A QDRO shall state the following:

- (a) The participant's name, TRS participant identification number, and last-known mailing address;
- (b) The alternate payee's name and last-known mailing address;
- (c) The date of the marriage;
- (d) The date of the decree of dissolution of marriage;
- (e) That the order is for the purpose of property division;
- (f) Whether the order applies to:
 1. An active account from which the participant is not currently receiving a retirement allowance;
 2. A retired account from which the participant is currently receiving a retirement allowance and the date on which the participant retired the account;
 3. The participant's foundational benefit;
 4. The participant's supplemental benefit;
- (g) Whether the alternate payee shall receive:
 1. Recurring monthly payments from the participant's foundational benefit under Option A, Option B, or Option C; and
 2. For an account that has not yet been retired, a share of a termination refund of the contributions posted to the participant's foundational benefit account as either:
 - a. A fixed dollar amount; or

- b. A percentage calculated under Section 7(2) of this administrative regulation or as determined by either the court or the parties;
 - (h) Whether the alternate payee shall receive from the supplemental benefit of an account that has not yet been retired a disbursement of a one (1) time fixed dollar amount, with or without interest, with interest to be awarded as of the date of dissolution of the marriage, the one (1) time fixed dollar amount being payable upon execution of and receipt by TRS of a valid QDRO and within sixty (60) days following the active participant's effective retirement date with TRS;
 - (i) Whether the alternate payee shall receive from the supplemental benefit of an account that has not yet been retired, a share of a termination refund of the contributions posted to that account as either:
 - 1. A fixed dollar amount; or
 - 2. A percentage calculated under Section 7(2) of this administrative regulation or as determined by either the court or the parties;
 - (j) Whether the alternate payee shall receive from a supplemental benefit of an account that was retired prior to entry of the decree of dissolution of marriage, a monthly annuity or a one (1) time disbursement from the participant's remaining supplemental benefit balance as:
 - 1. A one (1) time fixed dollar amount; or
 - 2. A percentage calculated under Section 7(2) of this administrative regulation or as determined by either the court or the parties;
 - (k) When payments shall begin if an annuity;
 - (l) When payments shall cease if an annuity;
 - (m) That the alternate payee shall be paid in the same form as the participant, except that the alternate payee shall be entitled to only a one (1) time distribution from the supplemental benefit if the account has not been retired prior to entry of the decree of dissolution;
 - (n) If the alternate payee shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount of the foundational benefit to the alternate payee;
 - (o) Who shall be responsible for payment of the TRS processing fee; and
 - (p) All information required on the Qualified Domestic Relations Order to Divide TRS 4 Member's Benefits.
- (2) A QDRO shall be:
- (a) Approved by TRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;
 - (b) Approved and submitted by the participant and alternate payee or their legal counsel;
 - (c) Signed by the judge of a court of competent jurisdiction;
 - (d) Filed with the clerk of the court; and
 - (e) Certified by the clerk of the court.

Section 3. Administrative Provisions.

- (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to TRS and:
 - (a) If the participant is a retired member, request:
 - 1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be filed with TRS within sixty (60) days of the entry of the final divorce decree;
 - 2. A Change of Beneficiary for Retired Member form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or
4. A W-4P Withholding Certificate for Pension or Annuity Payments or "W-4P", if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. TRS 4 Active Member Account Beneficiary Designations form, if the participant wants to designate a beneficiary other than his or her estate; or
2. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with TRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee, or third party, including party's legal counsel, shall provide a completed TRS Authorization for Release of Information form with the request.

(3) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, TRS may, for the current fiscal year, provide the unaudited salary information electronically submitted to TRS by the participant's employer upon receipt of the written request and release.

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, TRS shall not project future earnings or future service, provide an actuarial opinion of present value of the participant's benefits nor calculate the value of the Social Security benefit the member would have received if he or she had contributed for purposes of offset under KRS 403.190. TRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the participant's account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by TRS and for which the participant has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive from the foundational benefit if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of the dissolution of marriage or receipt of the request for the information.

(c) The balance in the supplemental benefit.

(5) If the QDRO is directed to an account that has been retired, TRS shall provide the participant's monthly retirement allowance received from the foundational benefit, and any annuity received by the participant from the supplemental benefit, any remaining accumulated account balance at retirement, in the supplemental benefit, the total retirement allowance or annuity received to date, and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide which, if any, portion of the participant's foundational benefit and supplemental benefit are marital. TRS shall not decide whether, or if, any portion of the participant's foundational benefit and supplemental benefit are marital and potentially subject to division.

(6) The participant, alternate payee, or legal counsel shall submit a Qualified Domestic Relations Order to Divide Teachers' Retirement System 4 Member's Benefits form to TRS for review forty-five (45) days prior to filing the QDRO with the court. The draft QDRO shall be approved by the participant and alternate payee or their legal counsel. If more than one (1) of the participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each TRS account. The draft QDRO may be sent via U.S. Mail or scanned and electronically mailed to TRS for review.

- (7) TRS shall not review the draft QDRO until the following are received:
- (a) A \$300 nonrefundable processing fee, by money order, certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;
 - (b) The TRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;
 - (c) Copies of the participant's and alternate payee's signed Social Security cards;
 - (d) If the QDRO is directed to an account that has been retired, a TRS Authorization for Direct Deposit form completed by the alternate payee and his or her financial institution; and
 - (e) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including TRS Military Service Certification and Affidavit form, with a copy of the discharge papers.
- (8) Within twenty (20) days of receipt of the QDRO, TRS shall notify the participant and alternate payee in writing whether the QDRO meets TRS requirements. If the QDRO meets TRS requirements, TRS shall approve the QDRO and return a fully executed hard copy via U.S. Mail for submission to the court. If the participant or alternate payee are represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel by hard copy via U.S. Mail or electronic mail for submission to the court. If the participant is a retired member, TRS shall forward tax withholding forms to the alternate payee.
- (9) If the QDRO does not meet TRS requirements, TRS shall notify the participant and alternate payee, in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall be provided to their legal counsel. The amended QDRO shall be submitted to TRS for review and approval prior to filing with the court.
- (10) TRS shall reject any QDRO entered by a court that has not been reviewed or approved by TRS prior to its submission to the court. TRS shall notify the participant, alternate payee, or their legal counsel, and the court in writing, identifying those provisions that are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by TRS.
- (11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to TRS with a \$150 nonrefundable processing fee for review and approval.
- (12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with TRS.
- (a) The QDRO shall not become effective until the certified copy is received by TRS.
 - (b) Upon receipt of the certified copy, TRS shall designate the participant's account for implementation of the QDRO.
 - (c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.
 - (d) If the participant is a retired member, payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by TRS, if the alternate payee has supplied correctly executed tax withholding forms. If the alternate payee either fails to return the tax withholding forms or does not correctly execute the forms, TRS shall apply the IRS default option in effect on the date the forms are received. If the alternate payee chooses a different option and then provides correctly executed tax withholding forms, future payments shall be adjusted. Retroactive payments shall not be paid for periods between entry of the parties' decree of dissolution and entry and acceptance of the QDRO by TRS.

(e) If the QDRO is directed to an account that has not yet been retired, payments to the alternate payee shall commence in the calendar month in which the participant begins to receive a monthly annuity. Upon receipt of an active member's retirement application, a TRS Authorization for Direct Deposit form and tax withholding documents shall be mailed to the alternate payee's last known address. Pursuant to KRS 161.640(3)(a), TRS cannot begin electronic fund transfers to the alternate payee until receipt of a fully executed TRS Authorization for Direct Deposit form. If the alternate payee either fails to return the tax withholding forms or does not correctly execute the forms, TRS shall proceed in the same manner as described in paragraph (d) of this subsection.

(f) If the participant is an active member who withdraws from service prior to eligibility for retirement and requests a refund of his or her accumulated foundational benefit or supplemental benefit, the provisions of 102 KAR 1:060, setting forth the requirements for processing payment of the refund to the participant or alternate payee, shall be followed. If the parties fail to designate the alternate payee's share of a refund in the QDRO, TRS shall refund the participant's entire foundational benefit and supplemental benefit to the participant in accordance with the provision of this administrative regulation and 102 KAR 1:060, and TRS and its staff shall have no liability for making the refund in this manner.

(13) If TRS is enforcing a QDRO that is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to TRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying TRS of any change in name, mailing address, or banking information.

(a) TRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) TRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a retirement benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraph (b) of this subsection, TRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify TRS of an address change or if the bank notifies TRS that the alternate payee's account has been closed, within sixty (60) days of the return of the notification to the alternate payee or receipt of notification from the bank, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address or bank account information is provided by the alternate payee.

(e) TRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying TRS in writing of an event that causes benefit payments to alternate payee spouse, child, or other dependent to cease.

(a) The participant shall provide TRS with a certified copy of the alternate payee's death certificate or marriage certificate. TRS shall suspend payments due to the alternate payee provided that submission of proof of the death or marriage of the alternate payee, if marriage terminates payments under the QDRO, is received by TRS before the beginning of the month following receipt of the participant's written notification.

(b) The alternate payee shall also be responsible for notifying TRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) TRS shall not be responsible for payments made to the alternate payee until it is given timely written notice and documentation of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

- (1) Retirement allowance from the foundational benefit;
- (2) Disability retirement allowance from the foundational benefit;
- (3) Disbursements, and if the participant is retired and receiving a retirement allowance, any annuity from the supplemental benefit; or
- (4) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

- (1) Survivor annuity that becomes payable after the participant's death;
- (2) Survivor benefits that become payable after an active contributing participant's death;
- (3) Accounts that are not vested at the time of the dissolution of marriage;
- (4) Life insurance benefit;
- (5) Refund as a result of an error;
- (6) Refund of an active or retired account in response to a participant's death;
- (7) Health insurance; and
- (8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his or her account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and Payment.

(1)

(a) If the QDRO is directed to an account that has been retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, annuities or disbursements from the supplemental benefit component, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage; and
2. The denominator of which shall be the participant's total full and fractional years of TRS service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(c) Option C may be utilized if the duration of the retired participant and the alternate payee's marriage was less than the participant's total full and fractional years of TRS service at the date of retirement. The parties or their legal counsel shall report the marital years in Option C of the QDRO.

(2)

(a) If the QDRO is directed to an account that has not yet been retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance or disability retirement allowance payable from the foundational benefit or one (1) time disbursement from the supplemental benefit, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of TRS service credit as determined by TRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(3) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance that is subsequently discontinued, the alternate payee shall not receive a benefit.

(4) If the QDRO is directed to an account that has not yet been retired, the participant's total annuity from the foundational benefit shall be calculated without inclusion of the discounts required under KRS 161.600(2)(d).

(a) If at retirement the participant is subject to discounts required under KRS 161.600(2)(d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, TRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) TRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

Section 8. Any person who attempts to make TRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to TRS for its costs and legal fees.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Teachers' Retirement System Authorization for Release of Information", July 2016;

(b) "Qualified Domestic Relations Order to Divide Teachers' Retirement System 4 Member's Benefits", July 2024;

(c) "Teachers' Retirement System Confidential Information", July 2016;

(d) "Teachers' Retirement System Authorization for Direct Deposit", July 2016;

(e) "Teachers' Retirement System Military Service Certification and Affidavit", July 2016;

(f) "Teachers' Retirement System Name or Change of Address", July 2016;

(g) "Change of Option Following Termination of Marriage", July 2016;

(h) "Change of Beneficiary for Retired Member", July 2016;

(i) "Designation of Beneficiary for TRS Life Insurance Benefit", July 2016;

(j) "TRS 4 Active Member Account Beneficiary Designation", April 2023;

(k) "Kentucky Resident State Tax Withholding Election". January 2023; and

(l) "Withholding Certificate for Pension or Annuity Payments" or "W-4P", 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-pdf/fw4p.pdf.

BRENDA MCGOWAN, Chairperson

APPROVED BY AGENCY: June 17, 2024

FILED WITH LRC: September 6, 2024 at 1:35 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 22 November 2024, at 9:00 a.m. Eastern Time at the offices of the retirement systems at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 through 30 November 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.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.