

QDRO Procedure

- I. **Procedure after receipt of order.** The Plan will apply the following procedure whenever it receives an order which purports to be a qualified domestic relations order (“QDRO”).
1. **Plan Administrator’s responsibility.** The Plan Administrator is responsible for administering the QDRO Procedure. The purpose of the QDRO Procedure is to establish a reasonable and consistent procedure for determining the qualified status of a domestic relations order and for making distributions pursuant to a domestic relations order which qualifies under Internal Revenue Code §414(p).
 2. **Notice to participant and to alternate payee.** Within ten days after receipt of a domestic relations order, the Plan Administrator will notify the participant and any alternate payee of the receipt of the order, and will deliver to the participant and to each alternate payee a copy of this QDRO Procedure.
 3. **Notice to trustee.**¹ The Plan Administrator, within two business days² after receipt of a domestic relations order, will notify the Plan trustee of the receipt of the order. The Plan Administrator also will direct the trustee to account separately for the amount of the participant’s benefit which is subject to the order. The Plan Administrator will direct the trustee to segregate the “QDRO amount” if possible.
 4. **Review of order.** The Plan Administrator will review the order within a reasonable time to determine its qualified status. The Plan Administrator will complete a QDRO Determination Checklist with respect to each order the Plan receives. In most circumstances, the Plan Administrator will complete review of the order within 30 days of receipt. After review, the Administrator will determine whether the order is a QDRO.
 5. **Suspension of participant investment or distributions.** If the Plan permits participant-directed investments, the Plan will suspend the participant’s right to direct any investments during the period the Plan Administrator is determining the qualified status of the order.³ If the participant is receiving benefits from the Plan at the time of receipt of the order, the Plan Administrator will suspend distributions to the participant to the extent the Plan Administrator deems necessary to comply with the order should the Plan Administrator determine the order is a QDRO.
 6. **Determination order is a QDRO.** If the Plan Administrator determines the order is a QDRO:
 - a. The Plan Administrator will notify the participant and each alternate payee the order is a QDRO and the Plan will distribute pursuant to the QDRO. The Plan Administrator will notify the participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO Determination Checklist, which will include the Plan Administrator’s certification.
 - b. If the QDRO requires immediate payment, the Plan will pay the designated benefits as soon as administratively feasible. Payment of any amount the order required the Plan to pay during the determination period will include interest from the date the QDRO required the first payment, at the rate of interest the trustee determines reasonable. The rate of interest payable on passbook savings accounts is a reasonable rate of interest for this purpose.

¹ Delete in the case of a tax-exempt 457 plan that does not have a trust.

² Except for the time limitation mentioned in paragraph 7(c), the time limits stated throughout this QDRO Procedure are not mandated by Code §414(p) and are guidelines for “reasonable procedures” required by Code §414(p)(6)(B). The employer may modify this procedure as it deems appropriate.

³ See *Schoonmaker v. Amoco Corp. Employee Savings Plan*, 987 F.2d 410 (7th Cir. 1993), regarding placing a “hold” on the participant’s account upon receipt of a QDRO.

- c. If the Plan cannot make the distribution within 30 days of the determination of qualified status of the QDRO, the Plan Administrator will advise the parties of the delay, of the reason for the delay and of the date by which the Plan expects to make payment.
 - d. The Plan Administrator will advise the participant when the Plan has completed payment to the alternate payee.
 - e. The Plan will maintain a separate accounting (which may include a segregated account) for each alternate payee until the Plan has completed benefits under the QDRO.
 - f. Each alternate payee is entitled to file with the Plan a beneficiary designation in the same manner as a participant in the Plan, except that if the Plan is subject to the joint and survivor annuity requirements, the joint and survivor annuity provisions do not apply to the alternate payee's spouse.
7. **Determination order is not a QDRO.** If the Plan Administrator determines the order is **not** a QDRO:
- a. The Plan Administrator will advise the participant and each alternate payee of the adverse decision and of the reasons for the adverse decision. The Plan will advise the participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO Determination Checklist, which will include the Plan Administrator's certification of the decision.
 - b. The Plan Administrator will discontinue separate accounting for the amounts payable under the order. The Plan will pay the benefits to the party entitled to receive the benefits. If the participant is not entitled to a present distribution of any of the segregated benefits, the Plan simply will continue to account for the participant's benefits as if the Plan had not received the order.
 - c. If the Plan Administrator determines the status of the order within the 18-month period beginning on the date the order would require the first payment, the Plan Administrator may delay distribution of any benefits subject to the order if the Plan Administrator has reason to believe a party will seek to cure the defects in the order. The Plan Administrator will continue to delay distribution during the period the Plan Administrator determines to be necessary to fulfill the Plan Administrator's duties under the Plan.⁴
8. **Consultation with legal counsel.** The Plan Administrator will consult with the Plan's legal counsel in case of questions which arise with respect to the interpretation of any provision of the order or with respect to the qualified status of the order.

II. **Procedure prior to receipt of order.** The Plan will apply the following procedure prior to the Plan's receipt of a domestic relations order.

- 1. **Requirements for application.** The Plan will proceed as described in paragraph 2. below if the Plan receives (verbal or written) confirmation from a participant and from the participant's spouse: (1) a domestic relations action (including a divorce) is pending or the participant and spouse are seeking a domestic relations order; (2) the Plan will receive a domestic relations order as a result of the action described in (1); and (3) Plan assets will be a source of payment under the domestic relations order.
- 2. **Suspension of participant investment or distributions.** If the Plan receives notice satisfying the preceding paragraph 1.: (a) the Plan will suspend any right of the participant to direct any investments during the period the Plan Administrator is awaiting receipt of the domestic relations order and is determining the qualified status of the order; and (b) if the participant is receiving benefits from the Plan at the time the Plan receives notice satisfying the preceding paragraph 1., the Plan Administrator

⁴ This paragraph allows the plan administrator some flexibility to delay distribution after a determination of the qualified status of the order. See the Joint Committee on Taxation's Explanation of Technical Corrections to the Tax Reform Act of 1984, pages 224-225. This legislative history suggests the plan administrator, during the 18-month period, may *continue* to defer paying benefits if the plan administrator has *notice* the parties are attempting to correct any deficiencies in the order. See Part II below regarding the plan's procedure, under certain circumstances, before receiving a domestic relations order.

will suspend distributions to the participant to the extent the Plan Administrator deems necessary, based on the notice provided by the participant and spouse.

3. **Ninety day limitation.** If, after ninety days from the receipt of notice described in paragraph 1., the Plan Administrator has not received a domestic relations order relating to the participant's benefits, the Plan Administrator will cancel the suspension of participant investment or distributions, and will administer the Plan as if the Plan Administrator had not received the notice described in paragraph 1. If, during the ninety day period, the Plan Administrator receives a domestic relations order relating to the participant, the Plan Administrator will proceed to determine the qualified status of the order under Part I of this QDRO Procedure. The participant and spouse, before or after the expiration of the ninety-day period, may provide the Plan Administrator a subsequent notice. If the subsequent notice satisfies the requirements of paragraph 1., the Plan will apply the provisions of this Part II with respect to the subsequent notice.⁵

* * * * *

⁵ Part II of the QDRO procedure permits the plan administrator to delay distributions or to suspend participant direction of investment *prior* to receipt of a domestic relations order upon notice from *both the participant and the spouse*. This Part II provides the plan administrator some ability to anticipate a domestic relations order, but also provides narrow guidelines for the exercise of this ability. If the plan administrator does not wish to entertain any "hold" on the participant's account prior to receipt of a domestic relations order, the plan administrator may eliminate this Part II from the QDRO procedure. The addition of Part II is consistent with *Schoonmaker v. Employee Savings Plan of Amoco Corp.*, 987 F.2d 410 (7th Cir. 1993). In *Schoonmaker*, the court held the plan administrator improperly put a hold on the participant's account *before* the receipt of a domestic relations order, because the plan's QDRO procedure *did not provide for such a hold*. The plan administrator must comply with the terms of the QDRO procedure.