

1 FINANCE AND ADMINISTRATION CABINET

2 KENTUCKY RETIREMENT SYSTEMS

3 (AMENDMENT)

4 **105 KAR 1:190. Qualified domestic relations orders.**

5 RELATES TO: KRS 16.505(36), (37), (38), 16.645(5), 61.510(37), (38), (39), 61.690, 78.510(34),
6 (35), (36), 78.545(26), 26 USC sec. 414(p). [~~16.505-16.652, 61.510-61.705, 78.510-78.852~~]

7 STATUTORY AUTHORITY: KRS 61.645(9)(g)~~(f)~~, **KRS 61.690**

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

11 [~~(3) requires the retirement systems to honor qualified domestic relations orders that which comply~~
12 ~~with the policy of the Board of Trustees established by this administrative regulation.] **This**
13 **administrative regulation establishes the requirements, procedures, and forms necessary to**
14 **administer QDROs.**~~

15 Section 1. Definitions. (1) "Alternate payee" **is defined in KRS 16.505(38), 61.510(39), and**
16 **78.510(36)** [~~means an individual who is named in a qualified domestic relations order to receive a~~
17 ~~portion of the member's retirement benefits].~~

18 (2) "Qualified domestic relations order" (QDRO) **is defined in KRS 16.505(37), 61.510(38),**
19 **and 78.510(35)** [~~means a court order issued incident to an annulment, separation or divorce which~~
20 ~~establishes an alternate payee's rights to a portion of the member's benefit].~~

21 **(3) "Participant" is defined in KRS 16.505(36), 61.510(37), and 78.510(34).**

1 Section 2. ~~[A QDRO shall be accompanied by a statement from counsel that the QDRO is~~
2 ~~current and not superseded by a subsequent QDRO and shall contain the following:~~

3 ~~—(1) Certification by the clerk of the circuit court in which the QDRO was entered;~~

4 ~~—(2) The name, Social Security number and last known mailing address of the member and the~~
5 ~~alternate payee;~~

6 ~~—(3) The date of marriage and the date of decree of dissolution of marriage;~~

7 ~~—(4) The correct name of the system or systems to which it applies;~~

8 ~~(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the~~
9 ~~alternate payee or the specific amount to be paid to the alternate payee; and~~

10 ~~(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's~~
11 ~~retirement, death or withdrawal from the system and whether the percentage pertains to the~~
12 ~~benefits attributable to the period of marriage, the member's entire period of employment or other~~
13 ~~specified period.~~

14 ~~— Section 3. If the retirement system determines that a QDRO does not meet the requirements of~~
15 ~~Section 2 of this administrative regulation, the retirement system shall do the following:~~

16 ~~—(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is~~
17 ~~not in compliance and will not be followed and the necessary changes to be made to the QDRO to~~
18 ~~bring it into compliance.~~

19 ~~—(2)(a) If the member is retired, the general manager shall direct the percentage or amount of~~
20 ~~benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the~~
21 ~~member's retirement allowance and placed in abeyance until the QDRO is amended.~~

22 ~~—(b) If the QDRO is not amended to comply with this administrative regulation within eighteen~~
23 ~~(18) months from the date the QDRO was first received, the percentage or amount of the member's~~

1 retirement allowance held in abeyance shall be restored to the member's account and paid to the
2 member.

3 ~~—(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and
4 determined to be in compliance shall only be applied prospectively.~~

5 ~~—Section 4. A QDRO shall not be effective until received by the retirement system and shall
6 apply only to those monthly retirement allowances that have not been processed by the retirement
7 system by the date of receipt.~~

8 Section 5.] The provisions of this section shall only apply to QDROs that were approved
9 by the retirement systems for enforcement prior to July 14, 2000. After the participant
10 notifies the retirement system of the participant's requested effective retirement date, the
11 retirement systems shall administer a QDRO that was entered prior to the participant's
12 retirement as follows:

13 (1) The retirement systems shall send the participant and the alternate payee
14 information regarding the amount of the benefits payable pursuant to the QDRO.

15 (2) The amount of the benefits payable pursuant to a QDRO approved for
16 enforcement by the retirement systems prior to July 14, 2000, shall be calculated as follows:

17 (a) ~~[If the QDRO is received prior to the member's retirement, then upon the member's
18 retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of
19 the benefits payable under the QDRO which shall be calculated as follows:~~

20 ~~—(1) The benefit payment shall be divided between the member and the alternate payee as
21 follows:] The alternate payee shall receive the amount computed by multiplying the basic option
22 amount due the participant [member] by the percentage allocated to the alternate payee by the
23 terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service~~

1 specified in the QDRO and the denominator of which shall be the participant's [member's] total
2 service credit. The participant [member] shall be paid all amounts in excess of the amounts paid
3 to the alternate payee.

4 **(b)**[(2)] If a lump sum payment equal to balance of the participant's [member's] account is to
5 be made, the percentage determined by this calculation shall be multiplied by the balance of the
6 participant's [member's] account and the result paid to the alternate payee. The participant
7 [member] shall be paid all amounts in excess of the amounts paid the alternate payee.

8 **(c)** [(3)] If a monthly benefit is paid, the options made available to the alternate payee shall be
9 derived from the participant's [member's] basic option.

10 **(d)** [(4)] Service added for disability under KRS 61.605 or KRS 16.582 shall not be included
11 in determining the amount payable to the alternate payee. Service credit purchased during the
12 period of marriage shall be included in the calculation under this subsection.

13 **(e)** [(5)] The payment options offered to the alternate payee shall be based on the alternate
14 payee's life expectancy. The alternate payee shall be offered the payment options described in KRS
15 61.635 which do not provide lifetime benefits to a beneficiary and, if the participant's is eligible,
16 the ten (10) year certain option as proved by KRS 16.576(5).

17 **(f)** [(6)] If the alternate payee predeceases the participant [member] after the participant's
18 [member's] retirement, a lump sum, determined actuarially, of the payments remaining to the
19 alternate payee shall be paid to the alternate payee's estate.

20 **(g)** [(7)] The alternate payee of a QDRO approved for enforcement by the retirement
21 systems prior to July 14, 2000, shall receive [a pro-rata share of any] increases given recipients
22 under KRS 61.691.

1 **(3)** ~~[Section 6. (1)]~~ If the **participant** ~~[member]~~ dies prior to retirement and prior to the death
2 of the alternate payee, the **participant's** ~~[member's]~~ account shall be divided in accordance with
3 the QDRO between the alternate payee and the beneficiary.

4 **(4)** ~~[(2)]~~ If the death benefit is a refund of the **participant's** ~~[member's]~~ contribution account,
5 the alternate payee shall only be offered a lump sum payment representing a portion of the
6 **participant's** ~~[member's]~~ account calculated in accordance with **subsection 2 of this section**
7 ~~[Section 5]~~ of this administrative regulation.

8 **(5)** ~~[(3)]~~ If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall
9 be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment
10 or an actuarial lump sum payment.

11 **(6)** ~~[Section 7. If the QDRO is received after the member's retirement, then the alternate payee~~
12 ~~shall receive the percentage or amount of the member's retirement allowance as stated in the~~
13 ~~QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms~~
14 ~~of the payment option previously selected by the member or until the death of the alternate payee.]~~

15 **(7)** ~~[Section 8.]~~ If the alternate payee dies prior to the **participant's** ~~[member's]~~ death,
16 retirement or withdrawal of account, no payment shall be made to the alternate payee.

17 **(8)** ~~[Section 9.]~~ When benefits become payable to the alternate payee, the retirement system
18 shall establish a separate account for the alternate payee which shall consist of the alternate payee's
19 pro rata share of the **participant's** ~~[member's]~~ contributions, service and benefit. Once the
20 alternate payee's account has been established, the alternate payee shall not be entitled to further
21 benefits acquired by the **participant** ~~[member]~~.

1 Section 3. (1) All sections of this administrative regulation except for Section 2 shall
2 only apply to ODROs approved for enforcement by the retirement systems on or after July
3 15, 2010.

4 (2) A ODRO shall apply to all retirement systems administered by the retirement
5 systems as established by KRS Chapters 16, 61, and 78 in which the participant is a member
6 during the period of the marriage that is the subject of the ODRO and from which the
7 participant will receive retirement benefits.

8 (3) A ODRO shall contain the following information:

9 (a) The participant's name;

10 (b) The participant's mailing address;

11 (c) The participant's Kentucky Retirement Systems member identification
12 number;

13 (d) The alternate payee's name;

14 (e) The alternate payee's mailing address;

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

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

17 (h) When payments under the ODRO are to end;

18 (i) How the cost of living increase provided in KRS 61.691 is to be administered;

19 and

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

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

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

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

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

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

8 Section 4. (1) The participant shall sign and submit a Form 6433, "Authorization
9 for Release of Information and Request for Information" to obtain the information
10 necessary for the Court to calculate the amount due to the alternate payee for purposes of
11 the QDRO.

12 (a) The participant shall provide the retirement systems with the following
13 information:

14 1. The participant's and the alternate payee's social security numbers;

15 2. The participant's and the alternate payee's dates of birth;

16 3. Date of marriage;

17 4. Date of divorce;

18 5. The participant's and the alternate payee's mailing addresses; and

19 6. The addresses of the participant's and the alternate payee's legal counsel, if
20 any.

21 (2) If the participant has not yet retired, the retirement systems shall provide as
22 of the date of the divorce, the participant's:

1 (a) Accumulated contributions and interest contributed and earned during the
2 marriage in each system in which the participant has marital service;

3 (b) Total number of months of service credit on file at the systems as of the
4 effective date of the divorce and at the time of the request in each system in which the
5 participant has service;

6 (c) The number of months of service credit earned and purchased during the
7 marriage in each system in which the participant has marital service;

8 (d) The hypothetical monthly retirement benefit pursuant to KRS 61.595 the
9 participant would receive when the participant is eligible for an unreduced retirement
10 benefit based on the final compensation and service credit as of the effective date of the
11 divorce in each system in which the participant has marital service; and

12 (e) The hypothetical actuarial refund payment option or lump-sum refund
13 payment the participant would receive when the participant is eligible for an unreduced
14 benefit based on the final compensation and service credit as of the effective date of the
15 divorce in each system in which the participant has marital service.

16 (f) The retirement systems shall use the participant's final compensation as of
17 the date of the divorce and the service credit accrued by the participant during the
18 marriage when calculating the participant's projected, estimated basic monthly retirement
19 allowance and the projected, estimated actuarial refund or lump-sum refund payment.

20 (3) If the participant retired prior to the effective date of the divorce, the
21 retirement systems shall provide the participant's:

22 (a) Current monthly retirement benefit in each system from which the
23 participant is receiving a monthly retirement benefit;

1 **(b) The total number of months of service credit earned and purchased during**
2 **the marriage in each system from which the participant is receiving a monthly retirement**
3 **benefit; and**

4 **(c) The total number of months of service credit in each system from which the**
5 **participant is receiving a monthly retirement benefit.**

6 **(4) If information other than the information supplied by the retirement systems**
7 **in accordance with subsections 2 and 3 of this section is required then the participant shall**
8 **send an additional request for information in writing or the Court shall issue a subpoena or**
9 **an order requesting the additional information.**

10 **Section 5. (1) A QDRO shall be on the form incorporated by reference that applies to**
11 **the subject matter of the order.**

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

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

16 **(4) The participant, alternate payee, or their legal counsel shall submit the**
17 **entered and certified QDRO to the retirement systems. A copy of the QDRO signed by the**
18 **Judge and entered by the Clerk of the Court may be submitted if the copy is certified by**
19 **the Clerk of the Court.**

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

1 (a) The retirement systems shall have no responsibility or liability for payments
2 made pursuant to a QDRO that was submitted in violation of this subsection that was
3 altered or dissolved by an order of an appellate court of competent jurisdiction.

4 (6) The participant, alternate payee, or their legal counsel shall submit a
5 certified check or money order in the amount of \$50.00 made payable to the Kentucky
6 State Treasurer as a non-refundable processing fee for the QDRO. The retirement systems
7 shall not review the QDRO unless the fee is submitted with the QDRO.

8 (a) The court shall order who is to pay the fee. The court may order that the fee
9 be divided between the participant and the alternate payee. Only one certified check or
10 money order shall be submitted in payment of the fee.

11 (b) There shall be no fee required for submission of a Form 6436, "Qualified
12 Domestic Relations Order for Child Support" or a Form 6437, "Qualified Domestic
13 Relations Order for Child Support by an Administrative Agency."

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

18 (7) If the retirement systems determines that the QDRO does not comply with
19 KRS 61.690, 26 USC sec. 414(p), or this administrative regulation the participant, alternate
20 payee, or their legal counsel shall have 90 days from the date of the retirement systems'
21 notification of the deficiency as provided in Section 6(4) of this administrative regulation to
22 submit a corrected QDRO. If a corrected QDRO is not submitted within 90 days of the

1 date of notification then the participant, alternate payee, or their legal counsel shall be
2 required to submit a non-refundable \$50.00 fee with a QDRO submitted after 90 days.

3 Section 6. (1) The retirement systems shall determine if the QDRO is
4 complete and qualifies as a QDRO pursuant to KRS 61.690, 26 USC sec. 414(p), and this
5 administrative regulation. A QDRO shall not be effective until the retirement systems has
6 determined that it complies with KRS 61.690, 26 USC sec. 414(p), and this administrative
7 regulation and has approved the QDRO for enforcement. The retirement systems shall
8 provide notification of its determination within 90 days of the submission of the QDRO
9 during the time period from July 15, 2010 until July 14, 2011. The retirement systems shall
10 provide notification of its determination within 45 days of the submission of the QDRO after
11 July 15, 2011.

12 (2) The retirement systems shall notify the participant, the participant's legal
13 counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, that the
14 QDRO has been approved for enforcement.

15 (a) If the participant has not yet retired, the retirement systems shall place the
16 QDRO on file until the participant files a notification of retirement or an application for
17 refund.

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

20 (3) The alternate payee shall submit a completed Form 6130, "Authorization for
21 Deposit of Retirement Payment" or a Form 6135, "Payment of Retirement Payment by
22 Check" prior to receiving payment under a QDRO. If the alternate payee has not submitted
23 a completed Form 6130, "Authorization for Deposit of Retirement Payment" or a Form

1 6135, "Payment of Retirement Payment by Check" by the last day of the month before the
2 first payment under the QDRO is due to be paid to the alternate payee, the retirement
3 systems shall segregate and hold the alternate payee's payments until the alternate payee has
4 submitted the required form.

5 (4) If the retirement systems determines that the QDRO does not comply with
6 KRS 61.690, 26 USC sec. 414(p), or this administrative regulation, the retirement systems
7 shall notify the participant, the participant's legal counsel, if known, the alternate payee, and
8 alternate payee's legal counsel, if known, that:

9 (a) The retirement systems has determined the QDRO does not comply with KRS
10 61.690, 26 USC sec. 414(p), or this administrative regulation;

11 (b) The reason for the determination that the QDRO does not comply with KRS
12 61.690, 26 USC sec. 414(p), or this administrative regulation; and

13 (c) The changes necessary to make the QDRO in compliance with KRS 61.690, 26
14 USC sec. 414(p), and this administrative regulation.

15 Section 7. (1) If a QDRO approved for enforcement and on file at the retirement
16 systems is amended or terminated, the participant, alternate payee, or their legal counsel
17 shall submit the amended entered and certified QDRO or a entered and certified order
18 terminating the QDRO to the retirement systems as provided in Section 4 of this
19 administrative regulation.

20 (2) The participant, alternate payee, or their legal counsel shall submit a
21 certified check or money order in the amount of \$25.00 made payable to the Kentucky
22 State Treasurer as a non-refundable processing fee for the amended QDRO or order
23 terminating the QDRO. The retirement systems shall not review the amended QDRO or

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

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

7 (b) There shall be no fee required for submission of a Form 6436, "Qualified
8 Domestic Relations Order for Child Support" or a Form 6437, "Qualified Domestic
9 Relations Order for Child Support by an Administrative Agency."

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

12 (4) If the retirement systems determines that the amended QDRO does not
13 comply with KRS 61.690, 26 USC sec. 414(p), and this administrative regulation or the order
14 terminating the QDRO is insufficient the participant, alternate payee, or their legal counsel
15 shall have 90 days from the date of the retirement systems' notification of the deficiency as
16 provided in Section 6(4) of this administrative regulation to submit a corrected amended
17 QDRO or a corrected order terminating the QDRO. If a corrected amended QDRO or a
18 corrected order terminating the QDRO is not submitted within 90 days of the date of
19 notification then the participant, alternate payee, or their legal counsel shall be required to
20 submit a non-refundable \$25.00 fee with an amended QDRO or order terminating the
21 QDRO that is submitted after 90 days.

22 (5) An amended QDRO approved by the retirement systems shall only be
23 administered prospectively.

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

3 Section 9. (1) A QDRO issued for purposes of division of the participant's
4 retirement account pursuant to a divorce entered prior to the participant's effective
5 retirement date shall be submitted on the Form 6434, "Pre-Retirement Qualified Domestic
6 Relations Order for Division of Marital Property."

7 (2) The effective date of the Form 6434, "Pre-Retirement Qualified Domestic
8 Relations Order for Division of Marital Property" shall be the participant's effective
9 retirement date as provided in KRS 61.590. If the participant receives a lump sum payment
10 representing monthly retirement benefits paid retroactively to the participant's effective
11 retirement date, the alternate payee shall receive a portion of the lump sum payment as
12 provided in the Form 6434, "Pre-Retirement Qualified Domestic Relations Order for
13 Division of Marital Property." The alternate payee shall not receive a retirement benefit if
14 the participant is not receiving a retirement benefit.

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

19 (a) As a monthly dollar amount if the participant elects a monthly retirement
20 benefit or as a one-time lump sum dollar payment if the participant selects the actuarial
21 refund payment option pursuant to KRS 61.635(11) at the time of the participant's
22 retirement, or as a lump sum dollar payment from participant's refund of contributions
23 and interest if the participant elects to terminate his membership pursuant to KRS 61.625;

1 (b) As a percentage of the participant's basic monthly retirement benefit
2 pursuant to KRS 61.595, actuarial refund pursuant to KRS 61.635(11), or lump sum
3 payment pursuant to KRS 61.625, which may be determined as follows:

4 1. The numerator of the fraction shall be the number of months during which
5 the participant was both a contributing member of any of the retirement systems
6 administered by Kentucky Retirement Systems and married to the alternate payee,
7 including service purchased during the marriage;

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

14 3. The resulting fraction shall be converted to a percentage, which shall be
15 divided by two to determine the percentage of the benefit due to the alternate payee;

16 Section 11. (1) The provisions of this section shall only apply to participants
17 whose membership date is prior to August 1, 2004. If a participant whose membership
18 date is prior to August 1, 2004 and who has a QDRO on file at the retirement systems is
19 awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the
20 alternate payee's portion of the participant's disability retirement benefit shall be
21 calculated as follows:

22 (a) If the QDRO ordered that the alternate payee be paid a specific dollar amount
23 from the participant's retirement benefit as provided in subsection (1)(a) of Section 10 of

1 this administrative regulation, the retirement system will pay the specific dollar amount
2 regardless of any enhancement of the participant's retirement benefit; or

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

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

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

15 (c) If the participant's disability retirement benefits are reinstated pursuant to KRS
16 61.615, the alternate payee's payment shall be reinstated;

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

20 Section 12. The provisions of this section shall only apply to participants whose
21 membership date is on or after August 1, 2004. If a participant whose membership date is
22 on or after August 1, 2004 and who has a QDRO on file at the retirement systems is
23 awarded disability retirement benefits pursuant to KRS 16.582, 61.600, or 61.621 the

1 alternate payee's portion of the participant's disability retirement benefit shall be
2 calculated as provided in subsection (1)(b) of Section 11.

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

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

10 (c) If the participant's disability retirement benefits are reinstated pursuant to KRS
11 61.615, the alternate payee's payment shall be reinstated;

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

15 Section 13. (1) A QDRO issued for purposes of division of the participant's
16 retirement account pursuant to a divorce decree entered after the participant's effective
17 retirement date shall be submitted on the Form 6435, "Post-Retirement Qualified Domestic
18 Relations Order for Division of Marital Property."

19 Section 14. (1) The Form 6435, "Post-Retirement Qualified Domestic
20 Relations Order for Division of Marital Property" shall specify the amount to be paid to
21 the alternate payee. The court shall use one of the following methods to calculate the
22 amount to be paid to the alternate payee:

23 (a) As a monthly dollar amount;

1 (b) As a percentage of the participant's selected monthly retirement benefit
2 pursuant to KRS 61.595, which may be determined as follows:

3 1. The numerator of the fraction shall be the number of months during which
4 the participant was both a contributing member of any of the retirement systems
5 administered by Kentucky Retirement Systems and married to the alternate payee,
6 including service purchased during the marriage;

7 2. The denominator of the fraction, shall be the total number of months of
8 service credit used to calculate the participant's retirement payment option;

9 3. The resulting fraction shall be converted to a percentage, which shall be
10 divided by two to determine the percentage of the benefit due to the alternate payee.

11 Section 15. (1) If the retirement systems determines that the Form 6435, "Post-
12 Retirement Qualified Domestic Relations Order for Division of Marital Property" does not
13 comply with KRS 61.690, 26 USC sec. 414(p), or this administrative regulation, the
14 retirement systems shall:

15 (a) The retirement systems shall segregate and hold the amount that would have been
16 payable to the alternate payee if the Form 6435, "Post-Retirement Qualified Domestic
17 Relations Order for Division of Marital Property" had been in compliance with KRS
18 61.690, 26 USC sec. 414(p), and this administrative regulation.

19 (b) The retirement systems shall hold the segregated amount for a period of no
20 more than eighteen (18) months;

21 (c) If a Form 6435, "Post-Retirement Qualified Domestic Relations Order for
22 Division of Marital Property" is submitted and determined to be in compliance with KRS

1 61.690, 26 USC sec. 414(p), and this administrative regulation within eighteen (18) months
2 the retirement systems shall pay the segregated amount to the alternate payee;

3 (d) If no subsequent Form 6435, "Post-Retirement Qualified Domestic Relations
4 Order for Division of Marital Property" is submitted and determined to be in compliance
5 with KRS 61.690, 26 USC sec. 414(p), and this administrative regulation after eighteen (18)
6 months the retirement systems shall pay the segregated amount to the participant;

7 (e) The eighteen (18) month time period begins on the date the first payment
8 would be required by the Form 6435, "Post-Retirement Qualified Domestic Relations
9 Order for Division of Marital Property" that the retirement systems determined was not in
10 compliance with KRS 61.690, 26 USC sec. 414(p), and this administrative regulation;

11 (f) If after eighteen (18) months a subsequent Form 6435, "Post-Retirement
12 Qualified Domestic Relations Order" is submitted and determined to be in compliance with
13 KRS 61.690, 26 USC sec. 414(p), and this administrative regulation, the Form 6435, "Post-
14 Retirement Qualified Domestic Relations Order" shall only be applied prospectively.

15 (2) The effective date of the first payment to the alternate payee shall be the
16 month following the month the Form 6435, "Post-Retirement Qualified Domestic Relations
17 Order for Division of Marital Property" is approved for enforcement by the retirement
18 systems.

19 Section 16. (1) A ODRO issued for purposes of payment of child support shall be
20 submitted on the Form 6436, "Qualified Domestic Relations Order for Child Support" or
21 the Form 6437, "Qualified Domestic Relations Order for Child Support by an
22 Administrative Agency."

1 (2) The amount of child support to be paid by the participant shall be
2 determined by a court of competent jurisdiction or an administrative agency with statutory
3 authority to issue an order for child support in accordance with the laws governing child
4 support.

5 (3) An alternate payee on the Form 6436, "Qualified Domestic Relations Order
6 for Child Support" or the Form 6437, "Qualified Domestic Relations Order for Child
7 Support by an Administrative Agency" shall not be required to submit a Form 6130,
8 "Authorization for Deposit of Retirement Payment" or a Form 6135, "Payment of
9 Retirement Payment by Check"

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

14 Section 17. (1) A QDRO issued for purposes of payment of alimony or maintenance
15 pursuant to KRS 403.200 shall be submitted on the Form 6438, "Qualified Domestic
16 Relations Order for Alimony/Maintenance."

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

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

1 Section 18. (1) The participant is responsible for notifying the retirement
2 systems in writing of an event which causes payments to the alternate payee under a
3 ODRO for Division of Marital Property or a QDRO for Alimony/Maintenance to end.

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

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

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

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

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

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

21 Section 19. (1) The participant is responsible for notifying the retirement
22 systems in writing of an event which causes payments to the alternate payee under a
23 QDRO for Child Support to be amended or to end.

1 (2) (a) If an alternate payee is being paid child support pursuant to a Form 6436,
2 “Qualified Domestic Relations Order for Child Support” or the Form 6437, “Qualified
3 Domestic Relations Order for Child Support by an Administrative Agency”, the
4 participant shall submit an order from a court of competent jurisdiction or an
5 administrative agency with statutory authority to order child support providing that
6 payments under the Form 6436, “Qualified Domestic Relations Order for Child Support”
7 or the Form 6437, “Qualified Domestic Relations Order for Child Support by an
8 Administrative Agency”, shall end or be amended.

9 (b) The retirement systems shall segregate and hold the payments due to the
10 alternate payee under a Form 6436, “Qualified Domestic Relations Order for Child
11 Support” or the Form 6437, “Qualified Domestic Relations Order for Child Support by an
12 Administrative Agency”, if the participant submits an order changing the custody of the
13 child to someone other than the alternate payee, a copy of the child’s marriage certificate, a
14 letter from the child’s high school indicating the child’s graduation date, the child’s birth
15 certificate, an order of emancipation of the minor child, or the child’s death certificate;

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

18 (c) If the participant does not submit an order from a court of competent
19 jurisdiction or an administrative agency with statutory authority to order child support
20 within ninety (90) days of the participant’s submission as provided in subsection (2)(b) of
21 this Section the payments being held shall be released to the alternate payee.

22 (9) The retirement systems shall not be liable for any payments made to the
23 alternate payee if the participant failed to provide proper notification, documentation of

1 the event, or the court order that causes payments to the alternate payee to end or be
2 amended.

3 Section 20. (1) If there are multiple QDROs on file for a participant's
4 account, the QDROs shall be administered in the following order:

5 (a) QDROs for the Division of Marital Property;

6 (b) QDROs for Child Support;

7 (c) QDROs for Alimony/Maintenance.

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

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

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

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

18 (6) (a) If the total amount of the payments due to alternate payees under the
19 QDROs being administered on the participant's account exceeds the amount of the
20 participant's monthly retirement benefit, the retirement systems shall notify the
21 participant and alternate payees under the QDROs that the QDROs cannot be
22 administered due to the exhaustion of the participant's monthly retirement benefit.

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

4 **Section 21. The alternate payee shall be responsible for notifying the retirement**
5 **systems in writing of any change in mailing address. The retirement systems shall contact**
6 **the alternate payee at the last known mailing address on file to notify the alternate payee**
7 **when a benefit subject to the QDRO becomes payable. The retirement systems shall have**
8 **no duty or obligation to search for or locate an alternate payee.**

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

11 **Section 23. (1) If the participant's retirement benefit is corrected pursuant to KRS**
12 **61.685 the alternate payee's payment shall also be corrected.**

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

16 **(3) If the alternate payee was underpaid because of the error that is being**
17 **corrected pursuant to KRS 61.685 the retirement systems shall pay the alternate payee a**
18 **lump sum payment of the additional funds due.**

19 **Section 24. Any person who attempts to make the retirement systems a party to a**
20 **domestic relations action in order to determine an alternate payee's right to receive a**
21 **portion of the benefits payable to the participant pursuant to a QDRO may petition the**
22 **court for payment of the retirement systems' costs and legal fees.**

1 Section 25. (1) Any person or party who requests a subpoena be issued for the
2 personal appearance of a representative of the retirement systems to appear at a deposition
3 or in a court or administrative proceeding regarding a QDRO shall reimburse the
4 retirement systems for the travel expenses and services of the retirement systems'
5 representative, or representatives, and the retirement systems' legal counsel, as an
6 administrative fee including:

7 (a) The Internal Revenue Service standard mileage rate;

8 (b) Parking and tolls;

9 (c) Meals if the retirement systems' personnel are required to travel and be
10 away from the retirement office from 6:30 a.m. to 9:00 a.m., 11:00 a.m. to 2:00 p.m., or
11 5:00 p.m. to 9:00 p.m.;

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

15 (e) Hotel/lodging expenses, if necessary.

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

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

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

1 Section 26. Neither the retirement systems nor its trustees nor its employees shall
2 have any liability for making or withholding payments in accordance with the provisions of
3 this administrative regulation.

4 Section 27[10]. Incorporation by Reference. (1) The following material is
5 incorporated by reference:

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

7 (b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of
8 Marital Property" July 2010;

9 (c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division
10 of Marital Property" July 2010;

11 (d) Form 6436, "Qualified Domestic Relations Order for Child Support" July 2010;

12 (e) Form 6437, "Qualified Domestic Relations Order for Child Support by an
13 Administrative Agency" July 2010;

14 (f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance"
15 July 2010;

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

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

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

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

1 ~~[The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement~~
2 ~~Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be~~
3 ~~obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort,~~
4 ~~Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.]~~

DATE



RANDY OVERSTREET, CHAIR
BOARD OF TRUSTEES OF
KENTUCKY RETIREMENT SYSTEMS

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 2010 at 9:00 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. 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 August 31, 2010.

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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, telephone (502) 696-8800 ext. 5501, facsimile (502) 696-8815.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Reg. No. 105 KAR 1:190
Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a qualified domestic relations order (QDRO).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by KRS 61.690.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures and incorporates the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000 are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the procedures and incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010. The procedures for administering QDROs approved for enforcement prior to July 14, 2000 are inconsistent with the amendment to KRS 61.690 effective July 14, 2010.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 61.690 by establishing the procedures and

incorporate the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is assist in the effective administration of the statutes by establishing the procedures and incorporating the forms necessary for participants and alternate payees to implement property division pursuant to a divorce and for the withholding of maintenance and child support payments from the participant's retirement benefit pursuant to a QDRO as required by the amendment to KRS 61.690 effective July 14, 2010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees who divorce and have divided the retirement benefit pursuant to a property settlement or court order, participants paying maintenance pursuant to KRS 403.200 to an alternate payee, participants paying child support to an alternate payee.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to submit an entered court order on the form incorporated into this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a \$50.00 fee for filing a QDRO and a \$25.00 fee for amending a QDRO. The fee is paid by participant, alternate payee, or divided between them in accordance with the order of the court. There is no fee for child support QDROs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The retirement benefit will be divided in accordance with the court order. The alternate payee will receive the payments due under the court order.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cost to Kentucky Retirement Systems of implementing this administrative regulation cannot be estimated because the demands on staff time and agency resources cannot be anticipated. It is anticipated that the fees provided for by this amendment to the administrative regulation as authorized by statute will offset some of this cost.

(b) On a continuing basis: There is no continuing cost other than normal administrative costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds) and the fees paid for filing and amending of QDROs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding. There are fees required for filing and amending the QDRO.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does establish fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No.105 KAR 1:190

Contact Person: Jennifer A. Jones

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes x No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Retirement Systems

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.645, KRS 61.690.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The cost for initial implementation is unknown.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

SUMMARY OF
MATERIAL INCORPORATED BY REFERENCE

The material incorporated by reference consists of the following forms:

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004; This is the form that alternate payees of QDROs accepted for enforcement prior to July 14, 2000 use to select a payment option.

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property" July 2010; This is the form the court uses to order the division of the retirement account of a participant who has not yet retired.

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property" July 2010; This is the form the court uses to order the division of the retirement account of a participant who has already retired.

(d) Form 6436, "Qualified Domestic Relations Order for Child Support" July 2010; This is the form the court uses to order the retirement systems to withhold child support from the participant's monthly retirement benefit and pay the child support to the alternate payee.

(e) Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency" July 2010; This is the form the Cabinet for Health and Family Services uses to order the retirement systems to withhold child support from the participant's monthly retirement benefit and pay the child support to the alternate payee.

(f) Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance" July 2010; This is the form the court uses to order the retirement systems to withhold alimony/maintenance from the participant's monthly retirement benefit and pay the alimony maintenance to the alternate payee.

(g) Form 6130, "Authorization for Deposit of Retirement Payment" April 2010; This is the form the alternate payee uses to establish the electronic deposit of the payment to a bank account.

(h) Form 6135, "Payment of Retirement Payment by Check" February 2002; This is the form an alternate payee uses to request the payment by check.

(i) Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders," July 2010; This is the form the participant uses to authorize the retirement systems to release information and to request the information necessary for the court to determine the amount due to the alternate payee under a QDRO.

There are twenty-six (26) pages incorporated by reference.

105 KAR 1:190

SUMMARY OF CHANGES TO
MATERIAL INCORPORATED BY REFERENCE

(a) Form 6015, "Estimate of a Monthly Retirement Allowance", July 2004; This form replaces the "Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, and has been updated to conform to the new numbering of forms and to conform with the Form 6010, "Estimated Retirement Allowance" used by members and beneficiaries to select payment options.