

SECTION 4 – QUESTIONS AND ANSWERS - UNDERSTANDING A QUALIFIED DOMESTIC RELATIONS ORDER

WHAT IS A DOMESTIC RELATIONS ORDER (“DRO”)?

A DRO is a finalized executed judgment, decree, order or property settlement agreement issued by a state court in a dissolution of marriage which grants rights to an Alternate Payee in the pension benefits of a plan Participant. The Alternate Payee may be a spouse, former spouse, child or other dependent of the Participant. The law is very strict in protecting the benefits of Participants from creditors, bankruptcy, etc. and a DRO is one of the very few situations under which the pension benefits of a Participant may be assigned to someone other than the Participant.

WHAT IS A QUALIFIED DOMESTIC RELATIONS ORDER (“QDRO”)?

A QDRO is a DRO that the Plan Administrator has determined meets the specific requirements contained in ERISA, 29 USC §1056(d) (ERISA §206(d)) and Internal Revenue Code (IRC) §414(p). The law requires that a plan administrator “qualify” the DRO before it can become effective.

WHAT IS THE FIRST STEP IN DRAFTING A QDRO AND WHY IS UNDERSTANDING THE TYPE OF PENSION PLAN IMPORTANT IN DECIDING HOW TO DIVIDE THE PARTICIPANT’S PENSION BENEFITS?

The first step in drafting a QDRO is to identify the type of retirement plan in which the Participant is participating. The International Union of Operating Engineers Local 4 and Its Branches Pension Plan is a multiemployer, defined benefit pension plan that is funded exclusively by employer contributions under a collective bargaining agreement. A defined benefit plan provides a formula for calculating an individual's pension that provides a fixed benefit at retirement. It does not maintain individual accounts into which contributions are made and Participants do not make contributions to the Plan.

Participants accumulate Pension Credits under the Plan based upon their hours worked each year in employment with an employer contributing to the Plan. Eligibility for benefits and the amount of those benefits are determined by an Participant's Pension Credits and years of Vesting Service under the Plan, his or her age at retirement, and the accrual rate per pension credit in effect when he retires or last worked and earned credit under the Plan.

Because the International Union of Operating Engineers Local 4 and Its Branches Pension Plan is a defined benefit plan, the QDRO will not be dividing money held in an individual account. Rather, the QDRO will allocate portions of the Participant's accrued benefit (based on the Participant’s Pension Credit and the accrual rate in effect, generally on the date of dissolution) between the Participant and the Alternate Payee. QDROs use either the Shared Method or Dividing (or Separate Interest) Method to allocate the Participant's benefit. Both methods are discussed below, after an explanation of the use of formulas to apportion benefits. Finally, an explanation is provided as to when benefits to the Alternate Payee can commence.

It is strongly suggested that prior to formulating a Domestic Relations Order, the parties and their legal counsel review the Participant’s pension status and eligibility for benefits with the Fund Office. The Participant or his legal counsel is advised to make a written request to the Fund Office for information about his status. Specific information about a Participant, such as benefit amount, cannot

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be provided by telephone. Additionally, such information cannot be provided to the Alternate Payee or her legal counsel without the written authorization of the Participant. Should the Alternate Payee or her legal counsel be unable to obtain the consent of the Participant, the Fund could release specific information about pension status only by court order through a subpoena. The Fund will also not provide present value calculations of a Participant's benefit to either party.

If within 60 days after the death of the Participant, the Fund has not received a Qualified Domestic Relations Order that was entered prior to the date of the Participant's death, the Fund will pay any benefits that are payable with respect to the deceased Participant in accordance with the terms of the Plan. Thereafter, notwithstanding the receipt of any order entered prior to the death of the Participant, the Fund will not modify or reverse any payments made as a result of the Participant's death. Generally, the Fund will not honor any domestic relations orders that are entered after the date of the Participant's death.

HOW MAY THE PARTICIPANT'S RETIREMENT BENEFIT BE DIVIDED?

There are two ways to divide a Participant's pension benefit.

For a DRO to meet the requirements of a QDRO, it must specify how a Participant's accrued benefits are to be apportioned between the Participant and the Alternate Payee. The two ways of dividing the benefits are the *separate interest or dividing method* and *shared payment method*.

Description of the Dividing Method (Separate Interest Method)

The Dividing Method awards a portion of the Participant's expected lifetime benefits to the Alternate Payee, to be paid over the Alternate Payee's lifetime. The Dividing Method essentially takes the whole benefit which a Participant accrues for a specific period of time as described in the domestic relations order, such as the duration of the parties' marriage, and creates two separate benefits. In contrast to the Sharing Method, under the Dividing Method the Alternate Payee is granted a separate entitlement to a benefit under the Plan. Likewise, the Participant then receives the remaining portion as a separate entitlement. On an actuarial basis, the two separate benefits cannot have a greater total value than the Participant's accrued benefit before the division. The dividing method is NOT available if the Participant is already receiving a benefit from the Fund.

ERISA requires that to be a QDRO, an order must specify the time period or number of payments to which it applies. When the Dividing Method is used, this requirement may be satisfied by stating when payments to the Alternate Payee are to begin. While it is not necessary that the order indicate the specific form in which benefits are to be paid, the order should contain language stating that the Alternate Payee can elect to receive her portion of the benefit in any form available under the Plan, with the exception of a Husband and Wife Benefit or Joint-and-Survivor Annuity payable with a subsequent spouse. Likewise, unless the parties intend for the Alternate Payee to receive survivor benefits from the Participant's benefit, the Participant retains all rights to elect any form of payment available under the Plan, including a joint-and-survivor benefit, if applicable. It should be noted that a partial lump sum option is available if the Participant is eligible for it.

The order can also permit the Alternate Payee to elect to receive benefits at any time after the Participant has reached the Plan's earliest retirement age, even if the Participant has not yet chosen to retire. With the Dividing Method, when the Alternate Payee goes into pay status, a beneficiary

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may be named to receive the survivor benefit provided under the form of the benefit elected by the Alternate Payee. However, as noted above, the Alternate Payee cannot select a Husband and Wife Benefit or Joint-and-Survivor Annuity with a subsequent spouse.

It is important to remember that under the Dividing Method the source of the Alternate Payee is only entitled to her portion of the benefit unless she has been named the surviving spouse under the Dividing Method. Thus, if the Participant dies before going into pay status the Alternate Payee will not be entitled to any survivor benefits of the Plan Participant unless she is named as a Surviving Spouse for purposes of the Preretirement Surviving Spouse Pension.

The order can also provide that the Alternate Payee be treated as a Surviving Spouse for the Participant's portion of the benefits purposes under the Plan. If the Dividing Method is used, the Alternate Payee may not receive a Surviving Spouse benefit based on the portion of the accrued benefit used to calculate the Alternate Payee's lifetime benefit. However, if the parties intend for the Alternate Payee to be provided with survivor benefits from the Participant's benefit, the order may require the Participant's benefit to be paid in a Husband and Wife form so that the Alternate Payee may receive a Surviving Spouse benefit based on the portion of the benefit that is divided and allocated to the Participant. The parties should note that if the Alternate Payee is the Surviving Spouse based on the entire portion of the benefit that is divided and allocated to the Participant, any subsequent spouse of the Participant will not receive a benefit upon the Participant's death.

One consequence of the use of the Dividing Method is that if the Alternate Payee dies after commencement of benefits, the Alternate Payee's share will not revert to or otherwise increase the amount of the Participant's benefit unless the order so specifies or the Alternate Payee names the Participant as a beneficiary under the form of benefits elected. Any benefits payable upon the death of the Alternate Payee based on the benefit form elected would be payable to the Alternate Payee's designated beneficiary. On the other hand, if the Alternate Payee dies before receiving any benefits, then the Alternate Payee's share will revert to the Participant, unless the order names a Successor Alternate Payee from a category of individuals qualified to be an Alternate Payee under ERISA. Individuals qualified to be Successor Alternate Payees include a spouse, former spouse, child or dependent of the Participant. For a QDRO to name a successor Alternate Payee, it must state their name, address, date of birth and relationship to the Participant. The Alternate Payee's estate cannot be named in the QDRO as a Successor Alternate Payee. Additionally the Alternate Payee may not name a beneficiary in the event the Alternate Payee dies prior to her Pension Effective Date (the date she begins receiving benefits).

Description of the Shared Payment Method (Benefit Split)

The Sharing Method gives the Alternate Payee a share of the Participant's benefit, which can be expressed either as a monthly flat dollar amount or a percentage of the Participant's monthly benefit. Under the Sharing Method, the Alternate Payee does not have the right to choose the form in which the benefit will be paid. Although the QDRO may specify that the Participant elect a specific form of benefit (e.g., 80% Husband and Wife Benefit) if payments to the participant have not already begun.

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If the Participant is already receiving a benefit from the Fund at the time the QDRO is established, the order **must** use the Sharing method. If the Participant has not yet begun to receive a benefit from the Fund when the QDRO is being established, then either the Sharing Method or the Dividing Method (discussed below) can be used in the QDRO.

ERISA requires that to be qualified, a DRO must specify the period of time or number of payments to which it applies. Therefore, the order must state when the Alternate Payee may begin to receive the designated share of the Participant's pension and when such payments will cease. For example, the order can provide the Alternate Payee with a benefit payable for the Alternate Payee's lifetime, the Participant's lifetime, or for a specific period, such as until a child reaches maturity or until the Alternate Payee remarries.

If the order allows the Alternate Payee to begin receipt of the designated portion of the Participant's benefit at any time once the Participant reaches the Plan's earliest retirement age, the order must also state the form in which the benefit is to be paid.

The shared payment to the Alternate Payee ceases upon the Participant's death, unless the Alternate Payee also has a share of the Participant's pension based upon being recognized as the Participant's Surviving Spouse under a Husband and Wife Benefit option. Designation as a Surviving Spouse means that if the Participant dies before the Alternate Payee, the Alternate Payee will continue to receive a benefit for life, provided that the Participant's benefit is being paid in a form providing survivor benefits.

There are several options concerning the Alternate Payee's status as a Surviving Spouse. The order can provide that the Alternate Payee is the Surviving Spouse for the purposes of the joint-and-survivor benefit payable if the Participant dies after beginning to receive a benefit from the Plan. This option is known as the Husband and Wife Benefit. Alternatively, the Alternate Payee can be recognized as the Surviving Spouse for the benefit payable if the Participant dies prior to receiving a benefit. This option is known as the Preretirement Surviving Spouse Pension. Finally, the Alternate Payee can be recognized as the Surviving Spouse for both purposes. The order should specifically state for what purpose the Alternate Payee is designated as the Surviving Spouse, and whether for the portion payable to the Alternate Payee under the order, or for the Participant's entire benefit.

The parties should note that if the Alternate Payee is named as the Surviving Spouse for the Participant's entire benefit, any subsequent spouse of the Participant will receive no benefits upon the Participant's death. The parties should also note that if the Alternate Payee is not designated as a Surviving Spouse for at least some portion of the Participant's benefit, nothing will be payable to the Alternate Payee after the Participant's death. For example, if the QDRO does not provide that the Alternate Payee is to be the Participant's surviving spouse for the Preretirement Surviving Spouse Pension, and if the Participant dies before the Alternate Payee has begun receiving a benefit, no benefits will be paid under the QDRO.

Under the Sharing Method, an Alternate Payee has no right to name a surviving beneficiary. If the Alternate Payee dies before the Participant, then the Alternate Payee's share reverts to the Participant unless the order names a successor Alternate Payee from a category of individuals qualified to be an Alternate Payee under the law. Individuals qualified to be successor Alternate

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Payees include a spouse, former spouse, child or dependent of the Participant. However, a successor Alternate Payee may not be named for joint and survivor benefits payable to the Alternate Payee as Surviving Spouse.

HOW ARE BENEFITS ALLOCATED?

Benefit Allocation Formulas

For a Domestic Relations Order to be qualified, it must clearly specify how benefits are to be apportioned between the Participant and the Alternate Payee. This is most commonly done by use of an allocation formula. It can also be done by awarding a specific monthly dollar amount to the Alternate Payee or through a percentage split. However, since the Participant often will not know his benefit entitlement at the time a Domestic Relations Order is entered by the court, use of a specific dollar amount is often not used.

In creating a formula by which to calculate the Alternate Payee's benefit, several factors are generally considered, such as the length of the marriage and the number of years of service under the Plan or the amount of pension benefit earned during the marriage. The following are examples of some basic formulas that could be used to calculate the Alternate Payee's benefit:

- The Alternate Payee is entitled to receive a monthly benefit from the Fund equal to 50% of the fraction of the Participant's benefit at retirement based on the Pension Credits accumulated by the Participant during the term of the marriage. The fraction shall be computed by using as the numerator, the amount of Pension Credits accumulated in the Plan during the marriage, and as the denominator, the total amount of Pension Credits under the Plan at the time of the Participant's retirement, or at the time the Alternate Payee elects to receive a benefit.
- The Alternate Payee shall receive a monthly benefit equal to 50% of the monthly benefit payable to the Participant based upon the Participant's accrued benefits earned as of the date of the dissolution of marriage.
- The Alternate Payee shall receive a monthly benefit equal to 50% of the monthly benefit payable to the Participant, without regard for the length of marriage, as accumulated at the time of the Participant's retirement, or at the time the Alternate Payee elects to receive a benefit.

While the above formulas use an apportionment of 50% of the Participant's benefit as a means to determine the Alternate Payee's benefit, this percentage is not mandated. It is up to the parties, together with their counsel and subject to the approval of the court, to choose an appropriate percentage of the Participant's benefit to be paid to the Alternate Payee. For an order to be a Qualified Domestic Relations Order, the Alternate Payee's percentage must be greater than 0%, but no greater than 100%.

The above formulas represent examples of possible ways to prepare a QDRO. It should be recognized that these formulas may not suit the particular needs of the parties. The parties are free to write a QDRO to suit their particular needs, as long as it satisfies the requirements of ERISA, the Internal Revenue Code, and is consistent with the provisions of the International Union of Operating Engineers Local 4 and Its Branches Pension Plan. The Plan's job is to determine if the formula in the order is specific and clear enough that the Plan can calculate the amount to be paid to the Alternate

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Payee. Orders that do not provide for a definitely determinable amount to be paid to the Alternate Payee will be rejected.

Language such as "account," "account balance," "amounts held," "interest accrued," or "net gains and losses" is inappropriate when referring to a defined benefit plan and should not be used. As noted above, the Plan is NOT a defined contribution plan, 401(k), profit sharing plan, or a money purchase plan into which specified amounts are paid into separate accounts by or on behalf of each Participant.

The order cannot grant any party the right to transfer assets or have the Plan transfer assets to an Individual Retirement Account (IRA) or to another Plan.

The order cannot grant any party the right to direct the investment of funds in the Plan. The assets of the Plan are invested on a pooled basis subject only to the direction of the International Union of Operating Engineers Local 4 and Its Branches Pension Fund's Board of Trustees and the various investment managers who are fiduciaries to the Plan.

The order cannot grant the right to the Alternate Payee to name a beneficiary under the Plan if the Alternate Payee dies before the payments begin. The Alternate Payee may name a beneficiary under one of the optional forms of payment under a separate interest QDRO.

WHEN COULD AN ALTERNATE PAYEE BEGIN TO RECEIVE BENEFITS?

To determine when an Alternate Payee may begin receiving benefits, the Fund must determine the Participant's eligibility for a pension.

- **Normal Retirement Pension** can be paid when the Participant reaches age 62 with 5 Pension Credits or 10 Pension Credits if the Participant has not worked at least one hour of service after January 1, 1998.
- **Early Retirement Pension** can be paid when the Participant reaches age 52 with 5 Pension Credits or 10 Pension Credits if the Participant has not worked at least one hour of service after January 1, 1998.
- **Disability Pension** – Even if the Participant becomes eligible for a Disability Pension, the Alternate Payee may not receive benefits until the Participant reaches his Earliest Retirement Age.

In addition, except as noted below, payments to the Alternate Payee will not commence until the required application process has been completed.

When A Participant Retires

If the Alternate Payee is not entitled to benefits prior to the Participant's Pension Date (the date the participant actually files an application for benefits), or has chosen not to submit an application prior to the Participant's Pension Effective Date, she automatically becomes entitled to benefits on the Pension Effective Date of the Participant's Pension. In such a situation, she is not required to submit a separate application if the QDRO requires the Sharing Method. When the Participant's application is processed she will be advised and will be sent the documents necessary to commence payment of her portion of the benefit. If the QDRO uses the Sharing Method, the Alternate Payee's benefit will commence simultaneously with the Participant. However, as noted below, if the QDRO uses the Dividing Method, the Alternate Payee will need to complete a separate application for benefits.

When Participant is in Pay Status

In accordance with federal law, if a Domestic Relations Order is received concerning a Participant who is already receiving benefits, that portion of his benefit which is specified in the order for payment to the Alternate Payee will be withheld with appropriate interest as determined by the Fund. Withholding begins as of the first day of the month after the month in which the order is received. Even if the order is later determined not to be a QDRO, the Fund will continue to withhold the specified portion of the Participant's benefit for a period not to exceed 18 months from the date withholding began. This period gives the parties sufficient time to amend and submit an order which can be determined to be a QDRO. Should an acceptable order be submitted within the withholding period, the month in which withholding began becomes the Alternate Payee's Pension Effective Date, unless the order says otherwise.

Upon the Fund's determination that the order is not a QDRO, the Alternate Payee and Participant (and their legal representatives) will be advised, and the parties will be given a period of 90 days from the date of the determination in which to appeal that determination. The Fund will continue to withhold the specified portion of the Participant's benefit for a period of 90 days from the date the determination letter is sent to the parties. If at the end of this 90-day period, the parties have neither appealed the Fund's determination nor amended the order, the amount withheld shall be released to the Participant with interest.

Upon the Fund's determination that the order is a QDRO, the Alternate Payee and Participant (and their legal representatives) will be advised, and the parties will be given a period of 90 days from the date of the determination in which to appeal that determination. The Fund's DRO Determination Response Form will be sent to both parties (and their legal representatives). The Fund cannot commence payment to the Alternate Payee for a period of 90 days from the date of the determination letter without the consent of both parties. Payment to the Alternate Payee will commence upon the occurrence of the earlier of the Fund's receipt of a signed Response form from both parties, or upon the expiration of this 90-day period.

When Participant Has Attained Early Retirement Age But Has Not Retired

An Alternate Payee who has been awarded an entitlement to benefits may submit an Alternate Payee Application form at any time after the Participant attains the Fund's earliest retirement age of 52 (provided the participant earned 10 Pension Credits or 5 Pension Credits after January 1, 1998), even if the Participant has not yet retired, provided that the QDRO gives her the right to begin receiving benefits at that time and identifies the benefit form in which she is to share. In such a case, the Fund will make a determination of the Alternate Payee's entitlement to benefits, advise her in writing, and forward the documents necessary to commence payment of benefits to her. The Alternate Payee's Pension Effective Date will be determined to be the first day of the month after the month in which her completed Application form is received.

However, in accordance with federal regulations, the actual payment of benefits shall generally commence no sooner than 30 days from the date of the notification letter.

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When Participant Has Attained Mandatory Retirement Age But Has Not Retired

In accordance with the Plan's rules and federal law, a Participant's pension benefits may not be deferred later than the April 1 following the Calendar Year in which the Participant attains age 70½—the Required Beginning Date. If a Qualified Domestic Relations Order provides that the Alternate Payee will share in the benefit payable to the Participant, then payment of benefits to the Alternate Payee will commence no later than the Participant's Required Beginning Date. If the Qualified Domestic Relations Order provides that the Alternate Payee will have a separate entitlement to a portion of the benefit otherwise payable to the Participant, then payment of benefits to the Alternate Payee will commence no later than the Alternate Payee's Required Beginning Date.

WHEN DO PAYMENTS TO THE ALTERNATE PAYEE STOP?

Divided Method or Separate Interest QDRO:

Under a Separate Interest QDRO, the Alternate Payee may be given the right to elect any benefit option available under the Plan, except for a Husband and Wife Benefit or Joint and Survivor Annuity with a subsequent spouse. Once the Alternate Payee has elected the form in which benefits are to be paid (this form must be authorized by the QDRO), payments then will continue to the Alternate Payee in accordance with the terms of the benefit option chosen by the Alternate Payee. A Separate Interest QDRO also may define a specific period over which the Alternate Payee is to receive his or her benefits, in which case the Alternate Payee's payments will cease at the end of that period.

It is possible, if the QDRO so provides, for an Alternate Payee who is the Participant's former spouse to be treated as the Participant's spouse for purposes of part or all of the Husband and Wife Benefit, whether the joint lives portion, the survivor portion, or both). Also, in the event of the Participant's death, if the Alternate Payee is entitled to any survivor benefits, payments shall continue to the Alternate Payee pursuant to the terms of that benefit option under the Plan.

The Alternate Payee may also name a beneficiary to receive any remaining benefits if a Certain and Life Option is elected by the Alternate Payee.

Shared Payment QDRO:

Under a Shared Payment QDRO, benefit payments made to the Alternate Payee may cease based on a stated date within the terms of the QDRO or when the Participant's benefit payments cease. A Participant's benefit may cease due to: 1) death of the Participant; 2) suspension of the Participant's benefit payments; or 3) distribution of the Participant's entire pension benefit. In no event may benefit payments continue beyond the death of a Participant, unless the Participant elected a form of benefit that provided a survivor benefit the Alternate Payee.

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WHAT HAPPENS TO THE BENEFITS OF AN ALTERNATE PAYEE IF THE PARTICIPANT'S BENEFITS ARE SUSPENDED?

Separate Interest QDRO

In a Separate Interest QDRO, regardless of whether or not a Participant's benefits are suspended, the Alternate Payee's benefit payments will continue in the amount specified in the QDRO and the form of payment the Alternate Payee has elected.

Shared Payment QDRO

In a Shared Payment QDRO, the Alternate Payee's payments will cease and resume with the Participant's payments. When the Participant's re-retirement pension calculations are made, they will be based on the Participant's age and service without regard to the Alternate Payee. When the Participant's benefit payments resume, the Alternate Payee will receive his or her apportioned share of the Participant's re-retirement monthly benefit amount.

IS THE ALTERNATE PAYEE ENTITLED TO A SUBSIDIZED EARLY RETIREMENT BENEFIT?

The Plan currently provides a subsidized early retirement benefit to Participants, which means that the actuarial reductions for retiring early are lower than the full actuarial adjustment. If the Alternate Payee chooses to receive benefits before the Participant actually retires, then benefits paid to the Alternate Payee will not include the Early Retirement Subsidy, but will receive a full actuarial adjustment based on the actuarial factors adopted by the Plan. However, if the Alternate Payee begins receiving benefits at or after the Participant retires, then the Alternate Payee may also receive his or her apportioned share of the subsidized early retirement benefit if applicable, subject to the terms of the Order.

WHAT IF THE AMOUNT OF THE PARTICIPANT'S BENEFIT INCREASES AFTER HE OR SHE IS IN PAY STATUS?

A QDRO must stipulate whether or not the Alternate Payee shall be entitled to his or her share of any cost-of-living increases, accrual rate adjustments, 13th checks, etc. In any circumstance, the Alternate Payee shall not be eligible for these benefits if the Participant is not eligible. If the QDRO is silent with respect to these matters, then the Plan will assume that the Alternate Payee is not entitled to share in any such benefit enhancements. Language in a QDRO stating that the Alternate Payee shall be entitled to all benefit "subsidies" or "enhancements" should be read to give the Alternate Payee a share of such adjustments. Language in the QDRO awarding the Alternate Payee a share of any "cost of living increases or similar enhancements" or language to that effect also should be read as entitling the Alternate Payee to share in any accrual rate adjustments, 13th checks, etc.

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WHAT HAPPENS IN THE EVENT OF THE ALTERNATE PAYEE'S DEATH?

Separate Interest QDRO

➤ Prior to commencement of Alternate Payee's benefits.

If the Alternate Payee dies before benefits have begun, and there is no contingent Alternate Payee named in the QDRO, the Alternate Payee's portion of the benefit will revert to the Participant. Pre-retirement death benefits are only available to active Participants.

➤ After commencement of Alternate Payee's benefit.

Any death benefits payable after Alternate Payee's death will depend on the form of benefit elected and whether death benefits are available under the form of payment (e.g. Joint and Survivor or 10 Year certain and continuous option).

Shared Payment QDRO

After the Alternate Payee's death, the portion of the Alternate Payee's share of the Participant's benefit payments shall revert back to the Participant.