

**OUTSTATE MICHIGAN TROWEL TRADES PENSION FUND
POLICY AND PROCEDURE FOR PROCESSING
DOMESTIC RELATIONS ORDERS**

The Employee Retirement Income Security Act, as amended, (ERISA), permits state courts to issue an order in the course of a divorce, separation, family support proceeding or other domestic relations matter that assigns a portion of a participant's pension benefits to certain other individuals (“alternate payees”) if the order meets certain requirements.

Accordingly, a qualified domestic relations order (QDRO) must clearly specify, at a minimum, the following information:

1. **The name and last known mailing address of the participant and each alternate payee.** An order that requires the Fund to make payment to someone with legal responsibility for the alternate payee, such as a guardian or party acting in loco parentis in the case of a child, or a trustee as agent for an alternate payee, may still be a QDRO. While the Fund does not require the participant’s or alternate payee’s social security number be present in the QDRO, it will request the information to ensure the QDRO is appropriately processed and applied.
2. **The name of the plan, Outstate Michigan Trowel Trades Pension Fund.** This requirement can best be satisfied by providing the full name of the Fund as set forth in the Plan; however, to the extent the Fund is clearly and unambiguously identified, an order can be determined to be qualified. Language that simply provides for an assignment of “all retirement benefits” will not be legally sufficient.
3. **The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee(s).** It is important to note that the Fund is a defined benefit pension plan. References to account balances or immediate lump sum payments are not applicable to the Fund and will, therefore, likely prevent the qualification of an order.
4. **The number of payments or time period to which the order applies.** If the Fund is easily able to determine a missing date, an incomplete order may still be determined to be qualified. For example, a marriage certificate can confirm the date of marriage and a divorce judgment can confirm a date of divorce; therefore, if those dates are not specified, the Fund can easily and reliably obtain them, and the order may still be acceptable.

When these requirements are met, the order is deemed a “qualified domestic relations order,” and the Fund is required to pay benefits to the participant and alternate payee(s) as directed by the QDRO. To the extent an order clearly identifies the rights of the parties, but is incomplete with respect to factual identifying information within the Fund’s knowledge, or easily obtained through a confirming correspondence with the parties, an order may be determined to be qualified.

There are also certain provisions that a QDRO **must not** contain:

1. The order must not require the Plan to provide an alternate payee or participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
2. The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
3. The order must not require the Plan to pay benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO;
4. The order must not require the Plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse.

The Board of Trustees of the Outstate Michigan Trowel Trades Pension Fund, a defined benefit pension plan, hereby adopts the following procedure in order to issue QDRO determinations in a timely manner, and hereby directs that each of the Fund's service providers follow this procedure regarding orders of state courts or agencies that may be QDROs:

1. **Notification of Receipt and of Information Available** - Upon receipt of any order from a state court or agency in a divorce, separation or family support matter, Fund Office personnel will immediately:

- (a) Forward such orders to the Fund's Legal Counsel for determination of whether the order is qualified;
- (b) Notify each person specified in a QDRO received by the Fund (at the address specified in the domestic relations order) of his/her right, upon request, to:
 - 1) Receive a copy of this Policy, as it may be amended from time to time;
 - 2) Receive copies of important Plan information (such as the Summary Plan Description, Plan and individual benefit and account statements);
 - 3) Receive a sample QDRO developed for the Fund; and
 - 4) Designate a representative to receive the above information.

If Legal Counsel receives an order that may be a QDRO from any source other than the Fund Office, Legal Counsel will immediately notify the Fund Office of such receipt.

2. **Information Required from the Participant** - Fund Office personnel will inquire of every participant applying for benefits whether that person has ever been divorced or separated. If s/he has been, the participant will be required to provide a complete and legible copy of every decree or judgment of divorce, separation agreement, property settlement and/or domestic relations order (order) in which s/he was a party prior to the commencement of benefits. Participants are encouraged to provide a complete and legible copy of every order(s) in which s/he was a party immediately upon the entry of such order(s) to avoid possible delays when applying for benefits. Providing a copy of the docket report for each divorce case can significantly expedite the review process.

A delay in any aspect of benefit commencement to a participant will not result in the participant being eligible to elect a retroactive annuity starting date if the underlying reason for the delay is related to the participant's failure to provide complete documents for review, or to resolve a matter where the order is **not** qualified but it is unclear whether the parties intended for it to be qualified.

3. **Review and Qualification by Legal Counsel** - Upon receipt, orders will be forwarded to Legal Counsel for review and determination as to whether a QDRO has been entered.

If Legal Counsel determines that the order is a QDRO, Legal Counsel will notify the Fund Office, the participant, the alternate payee(s) and their legal representatives, if any, in writing of the order's effect on the payment of benefits from the Fund. After an order is determined to be a QDRO, the Fund will recognize the alternate payee(s) as a beneficiary(ies) under the Plan and provide all notices provided to other beneficiaries.

If Legal Counsel determines that the order is not a QDRO, Legal Counsel will notify the Fund Office personnel and the participant. A final order in a divorce matter that is determined not to be a QDRO shall immediately terminate the status of the former spouse as a beneficiary.

If the order is **not** qualified, but it is unclear whether the parties intended for it to be qualified, Legal Counsel may also notify the participant, the intended alternate payee, and their legal representatives, if any, and explain the reason(s) that the order is not a qualified order so that the parties and their representatives may take appropriate action to revise the order to meet the legal requirements.

At the request of a participant, his/her spouse or former spouse or any of their legal representatives, Legal Counsel will review a draft order prior to its entry with the Court and notify the Fund Office, the participant, his/her spouse or former spouse and their legal representatives, if any, on the effect the draft order would have on the payment of benefits from the Fund if it were entered.

The Fund recognizes that it is not required to provide assistance or guidance to participants, the alternate payee(s) and/or their legal representatives, if any, through its Legal Counsel in domestic

relations matters. However, the Board has authorized Legal Counsel to do so by means of providing sample forms, and through written and telephone consultations, to aid in resolving a matter promptly, and to avoid future legal difficulties for the Fund. If the participant, the alternate payee(s) and/or their legal representative's use of this assistance becomes burdensome or unproductive, the Fund retains the option of withdrawing future assistance.

4. **Benefits Suspended/Reduced During Review and Qualification** - No benefits shall commence to any participant on whose behalf the Fund has received or been notified of the existence of an order which may be a QDRO until Legal Counsel has advised the Fund Office in writing what, if any, impact the order has on the payment of benefits from the Fund. In addition, the Fund will suspend or reduce the payment of benefits to any participant in pay status on whose behalf the Fund has received or been notified of the existence of an order which may be a QDRO until Legal Counsel has advised the Fund Office in writing what, if any, impact the order has on the payment of benefits from the Fund.

If the order is **not** qualified but it is unclear whether the parties intended for it to be qualified and Legal Counsel notifies the parties of that determination, no benefits shall commence to any participant for a period of 90 days. In addition, if the order is **not** qualified but it is unclear whether the parties intended for it to be qualified and Legal Counsel notified the parties of that determination, the Fund will suspend or reduce the payment of benefits to any participant in pay status for a period of 90 days. The 90-day period can be extended for good cause at the Fund's sole and exclusive discretion. If action to enter an order is concluded prior to the end of the 90-day period and Legal Counsel has advised the Fund Office in writing what, if any, impact the order has on the payment of benefits from the Fund, benefit payments can begin or resume.

5. **Duty to the Participant and Alternate Payee(s)** - Where the Fund follows the procedures set out above, its duty to protect the interests/potential interests of the participant and alternate payee/potential alternate payee during the review and qualification process will be discharged.

6. **Payment to the Alternate Payee(s)** -

Commencement - No benefits will be payable to the alternate payee(s) until Legal Counsel determines that the domestic relations order is a QDRO.

The alternate payee will begin receiving benefits no later than the participant begins receiving benefits. If the alternate payee(s) cannot be found, and the participant has elected to begin receiving benefits, the Fund Office will provide notice to the alternate payee(s) at the last known address and commence benefits to the participant and alternate payee(s) in the normal form under the terms of the Plan.

If the QDRO so provides, the alternate payee may elect to begin receiving benefits at any time on or after the date on which the participant is first eligible to begin receiving benefits, but no later than participant begins receiving benefits.

Where a QDRO provides for benefit payments to the alternate payee to begin prior to the date the Fund receives the QDRO or purports to impact benefits already paid, any “correction” of those earlier payments will be left to the parties unless specifically provided for in the QDRO. Where a payment is made by mistake following the determination that an order is qualified, the Fund will take steps to correct the payments made by adjusting future payments, unless the QDRO provide otherwise.

Form of Benefits - Benefits can be assigned in the form of a Shared Interest or a Separate Interest based on the terms of the QDRO. The terms of the QDRO may also provide the alternate payee with the option to elect either of these types of assignment at the time benefits commence. If the QDRO does not clearly indicate the type of assignment, the presumption will be that the parties intended a Separate Interest.

a) **Shared Interest** - If the alternate payee has been designated as a surviving spouse in the QDRO for purposes of the Qualified Post-Retirement Joint and Survivor Annuity, the Fund will recognize him/her as such. The alternate payee will receive benefits in the 50% Joint and Survivor form of benefits unless another Joint and Survivor form provided under the Plan is specified in the QDRO.

Benefits payable to an alternate payee in a Joint and Survivor form must begin at the same time that the participant’s benefits begin.

Unless the QDRO provides otherwise, if the participant retires early, the benefits payable to the alternate payee in the shared interest form will include the early retirement subsidy.

b) **Separate Interest** - If the alternate payee has **not** been designated a surviving spouse in the QDRO for purposes of the Qualified Post-Retirement Joint and Survivor Annuity, benefits will be paid in the Straight Life Form form based on the alternate payee’s life expectancy unless the QDRO provides the option to elect a Life-Ten Year Certain form, which will be calculated on his/her Straight Life Form benefit amount.

Only if the QDRO so provides, an alternate payee may elect to commence benefits on or after the first date on which the participant is eligible for benefits, even if it is before the participant elects to retire.

Only if the QDRO so provides, the alternate payee may be assigned a share of any early retirement subsidy paid to the participant. If the alternate payee commences benefits before the participant, the alternate payee’s benefits will not include any early retirement subsidy that may be payable to the participant. However, when/if the participant subsequently retires and commences

receiving subsidized early retirement benefits, the benefits payable to the alternate payee will be recalculated to include the early retirement subsidy.

c) Choice of Shared or Separate Interest - If the alternate payee has been designated as a surviving spouse in the QDRO for purposes of the Qualified Post-Retirement Joint and Survivor Annuity, but also has the option to elect the Straight Life Form based on the alternate payee's life expectancy and/or a Life-Ten Year Certain form, the Fund will recognize him/her as a surviving spouse for purposes of the Qualified Post-Retirement Joint and Survivor Annuity. The alternate payee will receive benefits in the 50% Joint and Survivor form of benefits unless another Joint and Survivor form provided under the Plan is specified in the QDRO or s/he elects one of the alternate optional forms provided in the QDRO. Electing one of the other optional forms shall constitute a waiver of the alternate payee's rights to the Qualified Post-Retirement Joint and Survivor Annuity.

Only if the QDRO so provides, an alternate payee may elect to commence benefits on or after the first date on which the participant is eligible for benefits, even if it is before the participant elects to retire. In such case, the alternate payee will be deemed to have chosen to receive his/her benefits as a separate interest.

Only if the QDRO so provides, the alternate payee may be assigned a share of any early retirement subsidy paid to the participant. If the alternate payee commences benefits before the participant, the alternate payee's benefits will not include any early retirement subsidy that may be payable to the participant. However, when/if the participant subsequently retires and commences receiving subsidized early retirement benefits, the benefits payable to the alternate payee will be recalculated to include the early retirement subsidy. Again, an alternate payee who elects to commence benefits on or after the first date on which the participant is eligible for benefits, but before the participant elects to retire will be deemed to have chosen to receive his/her benefits as a separate interest.

7. Other Benefits/Ancillary Benefits/Benefit Formula Changes - Because the QDRO must clearly specify the benefit to be paid to the alternate payee(s), the Fund will only recognize the assignment of benefits specifically provided for in the QDRO. The Qualified Pre-Retirement Survivor Annuity and, to the extent provided under the Plan, post-retirement benefit changes, supplements and other benefits must be addressed in the QDRO to be included in the assignment. All such benefits must be expressly assigned in the QDRO.

Unless the QDRO provides otherwise, the benefit assigned to the alternate payee will be subject to all pre-retirement benefit formula increases and decreases applicable to the benefit assigned to him/her.

The Fund's legal obligations with respect to QDROs are limited to the assignment of benefits that the Fund would otherwise pay to a participant. To the extent that a QDRO purports to address

any other matters, assets or individuals, the Fund shall have no obligation to secure or confirm compliance.

8. If the Participant Dies Before Benefits Begin - If the alternate payee has been designated a surviving spouse in the QDRO for purposes of the Qualified Pre-Retirement Survivor Annuity, and the participant predeceases the alternate payee before retiring and before the alternate payee has commenced receiving benefits, the Fund will recognize the alternate payee as a surviving spouse with respect to the marital portion of the participant's benefits as defined by the QDRO or in accordance with the specific terms of the QDRO.

If the alternate payee has been designated a surviving spouse in the QDRO for purposes of the Qualified Pre-Retirement Survivor Annuity, and the participant predeceases the alternate payee before retiring but after the alternate payee has commenced receiving benefits, the Fund will not recognize the alternate payee as a surviving spouse; however, benefits will continue under the Plan provisions governing the form of benefit the alternate payee elected.

9. If the Alternate Payee Predeceases the Participant - If the alternate payee predeceases the participant before the alternate payee begins receiving benefits, all of the benefits assigned to the alternate payee will revert to the participant.

If the alternate payee predeceases the participant after the alternate payee begins receiving benefits, how the alternate payee's benefits will be paid or whether they terminate upon his/her death will be determined under the Plan provisions governing the form of benefit the alternate payee elected.

10. Timing of Orders - An order that would otherwise be qualified will not fail to be a qualified order solely because it was:

- a)** issued after or revises another domestic relations order (whether qualified or not); or
- b)** issued after the death of the participant (as long as it is entered and received by the Fund within five years of the participant's death).

Although the timing of the entry of a QDRO will not be the sole cause for its failure to be qualified, it must otherwise meet the criteria to be a qualified order. Where the Fund has previously paid benefits to a participant or another beneficiary that were intended to be assigned by a QDRO to an alternate payee, but prior to the Fund's receipt or notice of such QDRO, such previously paid benefits are not benefits that the Fund remains obligated to pay.

Further, the Fund will rely on the terms of the last entered QDRO received by the Fund regardless of any conflict with other previously entered orders, which it will be deemed to supersede. If the Fund receives a QDRO and another order entered the same day, the Fund will rely on the terms of the QDRO in the event of any conflict. If the Fund receives a QDRO that is ambiguous

with respect to certain non-essential terms, the Fund may rely on the terms of any other entered orders to help clarify the parties' intent.

11. **Post-Retirement Orders** – The right to receive survivor benefits under the terms of the Plan permanently vests in the spouse of the participant at the time the participant retires unless before that date there is a valid waiver of the Qualified Joint and Survivor Annuity form by the participant and a valid consent to that waiver by the spouse. Generally, the Fund does not permit any change in the form of benefit after the issuance of the first benefit payment. Accordingly, a post-retirement QDRO may only assign an alternate payee(s) a portion of the monthly benefits being paid to the participant during his lifetime – no change in form or in the identity of the surviving spouse is permissible.

12. **Division of Benefits** - The Fund maintains records and calculates benefits on a monthly basis and will, therefore, use the full calendar months beginning and ending nearest to the period specified in the QDRO to calculate the benefits assigned to the alternate payee(s).

13. **Benefit Estimates** - The participant and the alternate payee will each be entitled to one estimate, containing no more than five (5) anticipated retirement dates, of the benefits payable to him/her under the various forms available under the Plan and QDRO annually without charge. The charge for each additional estimate, payable in advance by the individual requesting the estimate, will be the actual cost for the estimate as charged to the Fund by its actuary.

14. **Effect of a Suspension of Benefits after Retirement** - The Fund's suspension of the participant's pension benefits under the Plan's Suspension of Benefits provision will not affect the payment of the portion of the participant's accrued benefit assigned to the alternate payee(s) pursuant to a QDRO. If the Fund pays a supplemental benefit, the portion assigned to the alternate payee is subject to suspension.

15. **Taxes** - All benefits received by the alternate payee under the QDRO shall be included in the alternate payee's gross income in the tax year of receipt.

16. **Foreign Domestic Relations Orders** - The QDRO exception is limited to orders issued by state courts, as defined in ERISA. Therefore, the Fund will not recognize orders entered in jurisdictions other than any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

17. **Children as Alternate Payees** - The Fund will recognize children as alternate payees subject to a QDRO for purposes of child support; however, a child cannot be designated as a surviving spouse for purposes of the Fund's qualified pre- or post-retirement survivor annuities. The order can require payment to someone with legal responsibility for the child alternate payee.

Children are often identified as alternate payees through Child Support Orders or Income Withholding Orders issued to enforce child support obligations. Although such orders may be issued by agencies, the U. S. Department of Labor has determined they are issued pursuant to state domestic

relations law and have the authority of an order. Accordingly, such orders can be determined to be QDROs. In such cases, the child support agency will serve as agent for the child and receive the payment on behalf of the child.

18. **Limitations on Plan Obligations** – The Plan is not required to determine whether the issuing court or agency had jurisdiction to issue an order, whether state law is correctly applied to the order, whether service was properly made on the parties, or whether an individual identified in an order is qualified to be an alternate payee under state law.

19. **Determinations Final** - Following the review of a QDRO as set forth in this Policy, determinations are final. If the implementation of the QDRO does not meet the expectations of the parties, they must take action to amend or otherwise revise the QDRO in State Court. The Fund will not be a party to such matters.