

**UTILITY WORKERS' UNION OF AMERICA
DEFERRED COMPENSATION FUND
POLICY AND PROCEDURE FOR PROCESSING
DOMESTIC RELATIONS ORDERS
(Effective January 1, 2023)**

The Employee Retirement Income Security Act of 1974, as amended, (ERISA), permits state and tribal 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.

ERISA provides that 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, Utility Workers' Union of America Deferred Compensation 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).**
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.

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 Utility Workers' Union of America Deferred Compensation Fund, a defined contribution profit-sharing plan, hereby adopts the following procedure in order to facilitate the review of such orders, and hereby directs that each of the Fund's service providers follow this procedure regarding orders of state or tribal courts or agencies that may be QDROs. This Policy assumes the use of the "separate interest" approach, which is the most commonly used in assigning benefits in a defined contribution fund; if the parties seek to assign benefits under a QDRO using the "shared interest" approach, he or she may consult Fund Counsel for further guidance.

1. **Notification of Receipt and of Information Available** - Upon receipt of any order from a state or tribal 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 a QDRO;
- (b) Notify each person specified in the order 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.

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. 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 to make an assignment of benefits to an alternate payee from the Fund, 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. **Administrative Review Fee** - In accordance with the U.S. Department of Labor Field Assistance Bulletin 2003-3, the administrative expenses attendant to a QDRO determination will be allocated directly to the account(s) of the participant and/or alternate payee, as follows:

The QDRO administrative review fee is \$350. The administrative review fee will be assessed at the time the alternate payee's account is established and, unless a QDRO specifically provides otherwise, it will be allocated equally from the participant's account and the alternate payee's account.

5. **Commencement of Benefits 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. If the order is **not** qualified but it is unclear whether the parties intended to make an assignment of benefits to an alternate payee from the Fund and Legal Counsel notifies the parties of that determination, no benefits shall commence to any participant 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.

6. **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.

7. **Commencement of Benefits to the Alternate Payee(s)** - 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.

The Fund will interpret a QDRO that provides for benefit payments to the alternate payee to begin "immediately" to mean that 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.

8. **Form of Benefits** - Unless a QDRO specifically provides otherwise, an alternate payee may receive benefits in any form permitted by the Fund's Plan, except in a joint and survivor annuity form with respect to a subsequent spouse.

9. **Other Benefits** - 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.

10. **Self-Direction** - The Fund currently has a self-directed investment program in place. Unless a QDRO specifically provides otherwise, the amount assigned to an alternate payee will be segregated by liquidating investments in the participant's account in proportional amounts. Those assets will be transferred to an account to be established for the alternate payee and invested in the Fund's default investment. Thereafter, it will be the alternate payee's sole and exclusive

responsibility to direct the investment of his or her own account during any periods when self-direction is available. The alternate payee will be provided with information regarding the Fund's self-directed investment program.

11. **Loans** - An alternate payee will not be eligible to receive a loan from the Fund.

If a participant has an outstanding loan at the time his or her account is being divided pursuant to a QDRO, unless a QDRO specifically provides otherwise, the balance of such loan shall be included in determining the participant's full account balance subject to assignment to calculate the amount assigned to the alternate payee. However, the portion of the participant's account that secures the loan cannot be assigned to an alternate payee and will remain part of the participant's account. The participant will remain responsible for repayment of the loan.

If a participant previously suffered a deemed distribution as a result of a defaulted loan, the portion of his or her account that secured the loan is unavailable for assignment. The portion of the participant's account that secured the defaulted loan that resulted in a deemed distribution shall not be included in determining the participant's full account balance subject to assignment to calculate the amount assigned to the alternate payee, unless a QDRO specifically provides otherwise.

12. **Hardship Distributions** - An alternate payee will not be eligible for a hardship distribution.

13. **If the Participant Dies Before Benefits Begin** - If the participant predeceases the alternate payee before the alternate payee commences receipt of benefits, the alternate payee will be eligible to receive his or her assigned share of the account. If the participant dies after the alternate payee commences receipt of benefits, such death will have no effect on the alternate payee's receipt of benefits. Because the alternate payee can elect to receive his or her assigned share of the account in any form and because the death of the participant does not affect the alternate payee's receipt of benefits, there is no need to designate the alternate payee as the surviving spouse of the participant, unless the parties intend that the alternate payee be so designated and therefore receive the participant's benefit if the participant dies prior to distribution.

14. **If the Alternate Payee Predeceases the Participant** - The alternate payee may, on a form provided by and timely submitted to the Fund Office, designate a beneficiary to receive any benefits remaining payable after his or her death from that portion of the accrued benefit account assigned to her. If the alternate payee fails to name a beneficiary, if the beneficiary predeceases the alternate payee, or the beneficiary cannot be located, any benefits remaining will be paid based on the order of beneficiaries in the Plan. Attempts to designate an alternate payee's beneficiary in the QDRO will not be honored – an alternate payee's beneficiary designation must be made on forms provided by and timely submitted to the Fund Office.

15. **If the Parties Remarry** - In the event the alternate payee remarries the participant, a QDRO remains in effect unless and until a Court of competent jurisdiction amends or vacates the QDRO.

16. **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, and the Fund shall have no liability or obligation with respect to such QDRO.

Further, the Fund will rely on the terms of the last entered QDRO received by the Fund, irrespective of any conflict with other previously entered orders, which it will be deemed to supersede. If the Fund receives a QDRO and another order (such as a judgment of divorce) that were entered on 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.

17. **Post-Retirement Orders** - Once the Fund has paid the balance of a participant's accrued benefit account, a subsequently received QDRO cannot be honored.

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

19. **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.

20. **Foreign Domestic Relations Orders** - The QDRO exception is limited to orders issued by state or tribal 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 or by any Native American Tribal Court.

21. **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 rather than courts, 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.

22. **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. Further, the Plan has no obligations to verify whether other conditions that may be set forth in connection with an assignment of benefits have been met.

23. **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 a court of competent jurisdiction. The Fund will not be a party to such matters.