

# **Chicago Regional Council of Carpenters Millmen Pension Fund**

## **Administrative Procedures for Processing Qualified Domestic Relations Orders (the "QDRO Procedures") Effective January 1, 2013**

### **Introduction**

By adopting these Qualified Domestic Relations Order ("QDRO") procedures, the Board of Trustees of the Chicago Regional Council of Carpenters Millmen Pension Fund (the "Plan") revokes all previous rules and regulations relating to QDROs. The Board of Trustees also allocates to the QDRO Administrator and Plan legal counsel the ministerial duties and responsibilities for implementing and maintaining these procedures, reviewing domestic relations orders and processing QDROs according to these procedures. This allocation is made pursuant to and in accordance with the provisions of the Plan. The Board of Trustees, however, retains the final authority regarding these QDRO procedures, the review of domestic relations orders and the processing of QDROs.

The Plan is a defined benefit plan administered by the Board of Trustees consisting of three Employer Trustees and three Union Trustees. Benefits are subject to a vesting schedule as set forth in the Plan (and as summarized in the summary plan description). The Plan is qualified under Internal Revenue Code of 1986, as amended ("Code") section 401(a). In order to satisfy statutory requirements and maintain tax qualification status, the Plan provides that a Participant's benefits are not subject to assignment or alienation, whether voluntary or involuntary. However, with respect to divorces and certain other domestic relations orders, an exception to this prohibition exists for payments of benefits to an "Alternate Payee" pursuant to a QDRO. The federal statutory requirements for a QDRO may be found both in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") [29 U.S.C. § 1056(d)] and in the Code [26 U.S.C. § 414(p)].

The Plan will comply with the terms of a domestic relations order only if the order meets the requirements for a QDRO, as established by law and explained in these procedures. Parties seeking a QDRO may not rely on the QDRO Administrator, or any Plan delegates, for advice on which type or form of QDRO is most appropriate under any particular factual situation. The Plan will provide only factual information concerning a Participant's benefits and the terms of the Plan. The parties should consult with their legal advisors regarding specific legal requirements for a QDRO.

### **Requirements for a QDRO**

A domestic relations order is an order, decree, or judgment, including a court approved property settlement agreement that relates to the provision of child support, alimony payments or marital property rights and is issued under state domestic relations law ("Executed Order"). To constitute a QDRO, the Executed Order must create or recognize an Alternate Payee's right to receive directly all or a portion of the benefits otherwise payable to a participant under the Plan (the "Participant"). Each Alternate Payee must be the Participant's spouse, former spouse, child or other dependent. A state authority,

usually a court of law, must issue the Executed Order. In addition, the Executed Order must answer the following questions:

1. Which plan will pay? The Executed Order must specifically and accurately name the plan to which it applies. If the Participant has accrued benefits under more than one plan, a separate Executed Order should be prepared for each plan under which benefits are to be divided.
2. To whom will benefits be paid? The Executed Order must indicate the name and last known mailing address (including zip code) of the Participant and the Alternate Payee. For purposes of administration and benefit distribution, the Executed Order should also contain the dates of birth and social security numbers for the Participant and the Alternate Payee. The parties may, however, provide their social security numbers and dates of birth in a separate writing for privacy purposes. The Executed Order should identify its purpose (*i.e.*, alimony, child support or marital property) as well as the relationship of the Alternate Payee to the Participant, not only for proper determination as to whether the Executed Order is qualified, but also for tax purposes.
3. How much will be paid? The Executed Order must clearly specify the amount or percentage of benefits payable from the Plan to the Alternate Payee or the exact manner in which such part of the benefit is to be determined. Reference to benefit division formulas set forth in named court cases is not sufficient. Specific details must be given regarding the proposed division. If the formula is based on benefits accrued during marriage, the Executed Order should specify the date of marriage and the date of divorce. A formula must measure a Participant's benefit in the Plan in terms of "Years of Pension Credit" and not by periods of employment. As used in the Plan, "Years of Pension Credit" includes partial years.

The Executed Order should specifically state whether the Alternate Payee will be entitled to share in pre-retirement benefit rate increases, post-retirement benefit increases or early retirement subsidies paid to the Participant, if any.

If the Alternate Payee begins receiving benefits under the Executed Order before the Participant retires, the Alternate Payee's benefit may take into account only the present value of benefits, disregarding any early retirement subsidy. Furthermore, the Alternate Payee's benefit will not be recalculated to include a share of the early retirement subsidy if the Participant retires after the Alternate Payee is in pay status and the Participant receives a subsidy unless the Executed Order specifically provides for recalculation under these circumstances.

If the Executed Order is silent in this regard, the Alternate Payee will not share in these benefits, or if an Executed Order provides that the Alternate Payee is not entitled to share in any early retirement subsidies available to the Participant, then the amount of the subsidy that would otherwise apply to the Alternate Payee's share is forfeited to the Fund. It is not payable to the Participant.

The Executed Order cannot require the Plan to provide increased benefits, determined actuarially, nor can it require any type of benefit or option not otherwise provided by the Plan. For example, an Executed Order that is submitted to the Plan after the Participant's annuity starting date cannot require payments to the Alternate Payee for the Alternate Payee's lifetime.

Furthermore, an Executed Order that is submitted to the Plan after the Participant's surviving spouse's annuity starting date cannot assign the Alternate Payee all or part of the surviving spouse benefit that, under the form of benefit in effect, is payable to the Participant's surviving spouse.

In addition, the Executed Order must not require payments to an Alternate Payee that were previously awarded to another Alternate Payee under an earlier QDRO.

4. When will benefit payments start and stop? The Executed Order must specify when the Alternate Payee may elect to receive his or her benefit. The Alternate Payee must file an application to receive benefits; benefits are not automatically distributed, unless the benefits are subject to the Plan's mandatory cashout provisions. Any applicable review period (see "Request for Review" section on page 8 of these procedures) must either expire or be waived by the parties before the Plan can distribute an Alternate Payee's benefits.

There are two types of QDROs. A "separate interest" QDRO is one under which the Alternate Payee has the power to elect the timing and form of benefit as provided by the Plan; this will determine the number or period of payments.

A "shared payment" QDRO is one under which the Participant elects the timing of the payments, and the Alternate Payee shares a portion of each payment. The Executed Order must specify when payments to the Alternate Payee begin and end. Payments cannot begin prior to the later of the commencement of distributions to the Participant or approval of the Executed Order by the Plan.

If the Participant is already in pay status at the time an Executed Order is entered, then the Executed Order must take the form of a shared payment QDRO. In such a situation, the Alternate Payee cannot be named as a surviving spouse for purposes of the qualified joint and survivor annuity ("QJSA"), unless the Alternate Payee was the spouse of the Participant at the time of the annuity starting date and the Participant elected a QJSA at the time of the annuity starting date. In this situation, the Executed Order also may take away the Alternate Payee's surviving spouse rights. In such case, the Participant's form of distribution may be amended as provided in the Plan.

If the Participant is in pay status, and the Alternate Payee is receiving a portion of the benefits under a "shared payment" QDRO, then if the Participant's benefits are suspended under the provisions of the Plan, this suspension of benefits shall also apply to any benefits payable to the Alternate Payee. Furthermore, in the event that the Participant is overpaid benefits the obligation to repay such benefits that applies to the Participant also applies to the Alternate Payee. The Board of Trustees has the right to recover all pension payments that were improperly received including the right to use offsets against future benefit payments. Upon recommencement of the Participant's benefits, the Trustees may withhold the first pension benefit payment to both the Participant and the Alternate Payee, plus, if necessary, an amount from future pension payments, equal to up to 25% of each subsequent pension payment.

5. What will happen when the Participant dies? The consequences of the Participant's death depend on which approach the Executed Order follows.

- (a) Shared Payment Approach. The Alternate Payee's share of the Participant's benefits are extinguished when the Participant dies. No further payments are available to the Alternate Payee unless the Executed Order specifically designates the Alternate Payee as a surviving spouse for part or all of the qualified preretirement survivor annuity ("QPSA") or the QJSA.
- (b) Separate Interest Approach. If the Participant dies before benefits commence to either party, the award of a separate annuity to the Alternate Payee shall be null and void. The Alternate Payee will not receive any benefits under the Executed Order, unless the Alternate Payee is designated as the Participant's surviving spouse for purposes of the QPSA.

If the Participant dies after benefits commence to either party, the Participant's monthly benefit, if any, will automatically terminate. In that event, the Participant's death will not affect the Alternate Payee's benefit.

6. What will happen when the Alternate Payee dies? The consequences of the Alternate Payee's death depend on which approach the Executed Order follows.

- (a) Shared Payment Approach. Any payments to the Alternate Payee will end when the Alternate Payee dies. Thereafter, the Alternate Payee's benefits will be restored to the Participant. A Participant cannot name a new survivor annuitant if the Alternate Payee dies on or after the Participant's annuity starting date. Similarly, the Alternate Payee cannot name a beneficiary to receive his or her benefits.
- (b) Separate Interest Approach. If the Alternate Payee dies before commencing any benefits, then the Alternate Payee's benefits will be restored to the Participant effective as of the first day of the month immediately following the Alternate Payee's death. If the Participant is already in pay status, the Plan Administrator shall adjust the Participant's benefit to include the restored benefits as soon as administratively feasible. If the Alternate Payee dies after commencing benefits, then the Alternate Payee's benefit will not be restored to the Participant. Once the Alternate Payee enters pay status, any death benefit payable to the Alternate Payee's beneficiary will depend on the form of distribution that the Alternate Payee has elected.

7. What will happen if the Participant is not eligible for benefits when he or she separates from service? If the Participant has not completed sufficient service to become eligible to receive benefits before the Participant separates from service, then any QDRO awarding benefits to the Alternate Payee is null and void.

8. What will happen if the Participant elects a Disability Pension? The Plan document specifically provides that the Disability Pension is treated as an accrued benefit, rather than an auxiliary benefit. This has the following practical implications for administration, especially with respect to QDROs:

- a. Annuity Starting Date. The annuity starting date is the date that the Disability Pension commences. The Plan offers all optional forms of benefit at the Disability Pension commencement date. If married, the Participant must receive the

Disability Pension in the form of a QJSA, or must obtain spousal consent to elect an optional form of benefit.

Section 3.9 of the Plan document provides that a Disability Pension is a non-auxiliary benefit. This means that a Disability Pension shall be treated no differently for purposes of the rights acquired by an Alternate Payee through a QDRO.

- b. Retroactive Payment Options. When a Participant applies for a Disability Pension, the Plan determines whether and as of what date the Participant became "Disabled" for purposes of this benefit. Such determinations are retroactive in nature, and may go back several years. Under the Plan, the Participant has the option of electing a retroactive annuity starting date, with a lump sum "catch-up" payment; or electing a prospective annuity starting date, which is actuarially increased to reflect the later annuity starting date.

If the QDRO is in the form of a shared payment, the Alternate Payee's distributions will depend on the form and timing of the Participant's election. Conversely, if the QDRO is in the form of a separate interest, the Alternate Payee has the same right to elect either a retroactive or prospective benefit that a Participant has. The Participant's "earliest retirement date" for purposes of Code section 414(p)(4)(B) is the earliest date on which the Participant could elect to begin his Disability pension; thus, the Alternate Payee could elect a retroactive annuity starting date, while the Participant elects a prospective annuity starting date.

- c. Early Retirement Subsidy. Rather than an "auxiliary" disability benefit, the Disability Pension is a subsidized early retirement benefit, the only difference being that if the Participant recovers prior to either early or normal retirement age, he/she can "re-retire" with all distribution options (except that if a Participant elected a partial lump sum payout for distribution of his Disability Pension, he cannot elect a partial lump sum payout for any subsequent retirement) and an accrued benefit that is effectively unreduced by any disability benefit payments.

If a QDRO provides that the Alternate Payee is not entitled to share in any early retirement subsidies available to the Participant, then the amount of the subsidy that would otherwise apply to the Alternate Payee's share is forfeited to the Fund. It is not payable to the Participant.

If the Participant's Disability Pension is suspended under the terms of the Plan, the Alternate Payee's benefit will also be suspended. If, at the time of suspension, the Participant was eligible for regular early retirement benefits, then if the QDRO is in the form of a separate interest, the Alternate Payee could independently elect to resume benefits, but without any early retirement subsidy, unless the Participant went into pay status with a subsidy.

- d. Division of Benefit. If the Participant has commenced a Disability Pension at the time a QDRO is entered, the QDRO must be in the form of a shared payment, and the Alternate Payee's benefit must end on the earlier of the Alternate Payee's death or the Participant's death, and will be subject to any suspension of benefits that applies to the Participant. No death benefits will be available to the Alternate

Payee if predeceased by the Participant, unless the Participant had elected the Disability Pension in the form of a QJSA with the Alternate Payee as the surviving spouse.

If a separate interest QDRO is already in place at the time a Participant commences a Disability Pension, then the Participant's benefit is based only on the amount of accrued benefit available to him after deducting the amount awarded to the Alternate Payee. This is true whether the Participant elects a retroactive or prospective annuity starting date.

In summary, the Executed Order should address all contingencies as comprehensively as possible. The Plan's summary plan description, which is furnished to all Participants and which is available upon request to prospective Alternate Payees, and is available on the Plan's website at [www.crccbenefits.org](http://www.crccbenefits.org), should assist in preparing an Executed Order.

### **Draft Orders or Written Notice of an Anticipated Executed Order**

The Plan suggests that parties submit a Draft Order for review prior to obtaining an Executed Order. A Draft Order is an order that the parties intend to constitute a QDRO, but has not been executed by the court. The Plan has the discretion to take action as necessary (e.g., place a hold on the Participant's benefits) after reviewing a Draft Order to protect the Alternate Payee's potential benefits pending receipt of an Executed Order provided the Participant is not already in pay status. The Plan also may take such actions if it receives written notice that a Participant's benefits may be subject to an Executed Order. The Plan will revoke any such action if it does not receive an Executed Order within a reasonable period of time (generally no longer than 60 days) after it receives the Draft Order or written notice.

When the Plan receives a Draft Order, the Plan will provide comments to the designated legal counsel or party submitting the Draft Order. The Plan will explain whether the Draft Order would or would not qualify as a QDRO if entered by the court. However, the Plan cannot make a final determination regarding whether a Draft Order constitutes a QDRO until it receives an Executed Order.

If the Participant is already in pay status at the time a Draft Order is received, benefits to the Alternate Payee may be awarded only on a prospective basis following the date the Plan receives an Executed Order.

### **Administrative Procedures for Determination of Qualified Status of an Executed Order**

The Plan will follow these administrative procedures when it receives an Executed Order:

1. Place a "Hold" on Participant's Benefits. If the Participant has not entered into pay status when the Plan receives an Executed Order, the Plan has the discretion to take such action as necessary to protect the Alternate Payee's potential benefits pending its final decision concerning the Executed Order.

If the Participant has entered pay status, the Plan shall suspend and separately account for any benefits which would have been payable to the Alternate Payee during the Determination Period. The Determination Period begins when the

Plan receives an Executed Order and ends no later than 18 months from that date.

2. Acknowledgement of Receipt. The Plan will notify the Participant and Alternate Payee (with copies to any respective legal counsel) when it receives an Executed Order. The Plan also will send a copy of these procedures to the parties or to legal counsel on the parties' behalf. These steps may be combined with the Plan's determination as to the qualified status of the Executed Order.
3. Determination of Qualified Status. Within a reasonable time, the Plan will determine whether the Executed Order is a QDRO. The Plan may request that its legal counsel review the Executed Order.
  - (a) Executed Order is a QDRO. If the Plan determines that the Executed Order satisfies all of the requirements for a QDRO, the Plan will:
    - (1) Notify the Participant, Alternate Payee and respective legal counsel that the Executed Order is a QDRO;
    - (2) Notify the Participant, Alternate Payee and respective legal counsel with regard to the procedure to request a review of the determination;
    - (3) Take such steps as are necessary to see that the QDRO is enforced, subject to the review period and procedures described below; and
    - (4) Release any withheld payments to the proper party as soon as administratively feasible after the review period expires and the Alternate Payee is entitled to take a distribution.

The Alternate Payee should contact the QDRO Administrator as soon as possible to complete any forms necessary to process the Alternate Payee's benefits.

- (b) Executed Order is not a QDRO. If the Plan determines that the Executed Order is not a QDRO, the Plan will notify the Participant, the Alternate Payee and respective legal counsel, in writing. This notice will explain why the Executed Order is not qualified. In addition, the Plan will provide the parties with the procedure to request a review of the determination.

If the Plan determines that an Executed Order is not a QDRO, the Participant and Alternate Payee shall have 60 days, or such longer period as granted by the Plan and communicated in writing to the parties, to provide a revised Executed Order which constitutes a QDRO. If the Plan does not receive a revised Executed Order within such period, or any written notice that the parties are pursuing a revised Executed Order, the Plan's determination of the Executed Order as not qualified will stand. The Plan will revoke any "hold" on the Participant's benefits. The Plan also shall release any withheld payments to the proper party.

If the parties revise and resubmit the Executed Order to the Plan after the applicable period, the Plan will treat the revised Executed Order as a new Executed Order subject to these administrative procedures.

- (c) Determination After 18 Months. If, at the end of the 18-month period, the issue as to whether the order is a QDRO is not resolved, the Plan Administrator will direct that the suspension of payments cease, and all amounts will be paid to the person(s) who would have been entitled to the amounts had there been no order, in accordance with the provisions of the plan and applicable law. If the Plan Administrator determines that an order is a QDRO more than 18 months after the determination period has begun, the order will apply on a prospective basis only.

4. Board of Trustees Ratification. The Board of Trustees will ratify all actions taken under these procedures at its scheduled meetings.

### **Request for Review**

If any interested person disputes the Plan's determination that the Executed Order is or is not a QDRO or disputes the Plan's interpretation of the QDRO's provisions, such person should file a written request for review with the Plan within 30 days of the date of the determination letter. The request for review should set forth the following:

1. A statement of the ground(s) for the request for review;
2. Specific reference to the pertinent provision or provisions of the Plan, ERISA or the Code on which the request for review is based;
3. A statement of the argument(s) and authority (if any) supporting each ground for the request for review; and
4. Any other pertinent documents or comments which the person desires to submit in support of the request for review.

Within a reasonable time after an interested person files a timely request of review, the Plan shall notify all interested persons of the request.

Within 60 days after receipt of the request for review, unless special circumstances require an extension of time for processing the request and then not later than 120 days after the request for review, the Board of Trustees shall render a decision. The decision shall be communicated in writing to all interested persons, and shall include the specific reasons for the decision and references to the appropriate provisions of the Plan, ERISA, or the Code.

No Participant or Alternate Payee may commence legal action to challenge the determination of the status of an Executed Order, or the amount of benefits payable under the terms of a QDRO, until (s)he has exhausted all review procedures provided in this section.

### **For More Information**

Inquiries and Draft or Executed Orders submitted for review should be directed to the following address:

QDRO Administrator  
Chicago Regional Council of Carpenters Millmen Pension Fund  
12 East Erie Street, Chicago IL 60611