

**RULES
OF
THE TENNESSEE DEPARTMENT OF TREASURY**

**CHAPTER 1700-03-03
QUALIFIED DOMESTIC RELATIONS ORDERS**

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1700-03-03-.01 PURPOSE.

The rules in this chapter implement T.C.A. § 8-36-128.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.02 DEFINITIONS.

In addition to the definitions contained in T.C.A. § 8-34-101, the following definitions are applicable to this chapter:

- (1) Alternate payee means a former spouse of a member or retiree who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the benefits payable by the retirement system with respect to such member or retiree.
- (2) Qualified domestic relations order ("QDRO") has the same meaning as provided in § 414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 414(p); provided, that such order may only relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
- (3) Refund means a withdrawal of the member's accumulated contributions pursuant to T.C.A. § 8-37-210.

Authority: T.C.A. §§ 8-34-101, 8-34-313, 8-36-128, and 8-37-210. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.03 PAYMENT BY TCRS.

The retirement system will make payment of a retirement allowance or refund only as directed by statute or by a QDRO. After the retirement system determines that an order is a QDRO, the retirement system shall make payments to the alternate payee as directed by the QDRO at the time that a member begins receiving a monthly retirement allowance or receives a refund of contributions, unless the retirement system receives a certified copy of an order from a court of competent jurisdiction that withdraws or supersedes the previous order.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.04 SUBMISSION OF ORDERS.

A person who wishes to have the retirement system review a domestic relations order to determine whether it is a QDRO for the purpose of receiving retirement system payments shall submit a copy of a signed domestic relations order to the retirement system. Such order shall be on the form provided by the retirement system and must contain all requirements prescribed by these rules. The retirement system will reject any order that is not on the form provided. The copy shall be certified by the clerk of the court that entered the order. The retirement system shall not make a determination for orders not yet entered by the court.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.05 REQUIREMENTS FOR A VALID QDRO.

- (1) The retirement system will accept a court order as a valid QDRO if the order meets all of the following requirements:
 - (a) The order must relate to the provision of marital property rights for the benefit of the former spouse of the member or retiree.
 - (b) The order must be a certified copy of an original or amended order dated on or after the effective date of the rules in this Chapter.
 - (c) The order must have been issued by a court of competent jurisdiction in a divorce proceeding that provides for the distribution of property, or any proceeding to amend or enforce such a property distribution.
 - (d) The order must identify the Tennessee Consolidated Retirement System as the retirement system to which it is directed.
 - (e) The order must contain the name, address, and social security number of the member.
 - (f) The order must contain the name, address, and social security number of the alternate payee.
 - (g) The order must express any amount to be paid to the alternate payee from a member's retirement allowance as a dollar amount per month or as a percentage per month.
 - (h) The order must contain the beginning and ending dates of the marriage of the member and the alternate payee and assign a portion of the member's retirement allowance under the retirement system based upon the period of marriage.
 - (i) The order must contain an assignment of the retirement allowance based upon the value of a member's entitlement under the retirement system if he or she were to retire at full retirement age utilizing the regular service retirement allowance without taking into account an early retirement penalty for his or her total creditable service through the valuation date.
 - (j) The order must express any amount to be paid to the alternate payee from a member's refund as a dollar amount or as a percentage of the refund.
 - (k) The order must contain a provision authorizing the retirement system to increase the amount payable to the alternate payee each month based upon the alternate payee's share of any cost of living adjustment received by the member.

(Rule 1700-03-03-.05, continued)

- (l) The order must contain a provision directing the director to make payment to the alternate payee in accordance with the QDRO until either the member or the alternate payee dies, whichever occurs first. The order must contain a provision that provides that the QDRO becomes null and void upon the death of the member or the alternate payee.
- (2) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement will not be accepted by the retirement system as a valid QDRO.
- (3) The order may specify an alternative method for the parties to verify their social security numbers to the retirement system, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if the retirement system finds that the method of verification is insufficient for the purposes of payment of benefits or reporting of income for tax purposes.

Authority: T.C.A. §§ 8-34-313, 8-36-128, and 8-36-206. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.06 REVIEW OF ORDERS.

The director of the retirement system or the director's designee shall review the order for compliance with requirements imposed by statute or rule. Upon completion of the review, the director or the designee shall notify the member or retiree and each alternate payee in writing of the determination.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.07 DETERMINATION OF QUALIFIED ORDER.

- (1) Any determination that an order is a QDRO is voidable or subject to modification if the retirement system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.
- (2) If the director or designee determines that an order is not a QDRO, the notice shall identify the provisions of the order that do not meet the requirements of applicable statutes or rules.
- (3) Any determination by the director or the director's designee that an order is not a QDRO is a final decision by the retirement system. No appeal to the board of trustees is authorized. A party adversely affected by a determination may file a motion for reconsideration with the director no later than thirty (30) days after the date such determination is rendered if the party wishes to contest the determination. The director will review the motion for reconsideration as a lesser appeal as defined in Chapter 1700-03-02.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.08 EFFECT OF A VALID QDRO.

- (1) Retirement Allowance.
 - (a) After the retirement system has determined that a QDRO applying to a retirement allowance is valid, one of the following will occur:

(Rule 1700-03-03-.08, continued)

1. If the member has not yet started receiving a retirement allowance, the QDRO will be placed in the member's file and will be implemented when the first affected payment commences; or
 2. If the member is already receiving a retirement allowance subject to the QDRO, payment to the alternate payee will begin on the monthly payment date prescribed in T.C.A. § 8-36-117 in the month following approval by the retirement system.
- (2) Refund of Member Contributions.
- (a) After the retirement system has determined that a QDRO applicable to a member's refund is valid, one of the following will occur:
 1. If the QDRO provides for the allocation of a refund and the member has not applied for a refund, the QDRO will be placed in the member's file and will be implemented when payment of the affected refund is made;
 2. If a refund application is pending when the retirement system receives a QDRO that purports to apply to the refund but the refund payment has not yet been made, the retirement system will hold the portion of the refund that would be payable to the alternate payee until it receives clarification from the court as to whether the QDRO is effective against the pending refund. It is the member's or alternate payee's responsibility to obtain clarification from the court and notify the retirement system of the court's clarification; or
 3. If a refund payment has already been made when the retirement system receives a QDRO that purports to apply to the refund, the QDRO shall not be effective against that refund.

Authority: T.C.A. §§ 8-34-313, 8-36-117, and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-.09 BENEFITS AFFECTED BY A QDRO.

- (1) A QDRO may apply only to the following benefits administered by the retirement system:
 - (a) A monthly retirement allowance; or
 - (b) A member's refund of employee contributions.
- (2) A QDRO shall not apply to any of the following:
 - (a) A survivor benefit;
 - (b) Any disability benefit;
 - (c) An error refund; or
 - (d) Any other benefit.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-10 BENEFITS RESULTING FROM RESUMING MEMBERSHIP.

If a member terminates membership in the retirement system by withdrawal of contributions, the retirement system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a QDRO. If the former member later resumes membership in the retirement system, then the retirement system shall pay to an alternate payee no portion of retirement allowance payable to the member or retiree which results from the resumption of membership, even if the retirement allowance is a result in part from reinstatement of service credit initially credited during marriage. A member who reinstates service credit by depositing amounts previously withdrawn or refunded shall deposit the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to the alternate payee. The reinstatement fee shall be based on the total amount withdrawn, regardless of whether a portion or all of the amount was paid to an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-11 SUBMISSION OF AMENDED ORDER.

If a court amends an order that the retirement system has determined to be a QDRO, the member or retiree or alternate payee shall submit a certified copy of the amended order to the retirement system. The retirement system shall review any amended order for compliance with the requirements imposed by rule or statute for an original order. An amended order will be applied to member benefits beginning on the date the amended order is determined by the retirement system to be valid.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-12 TERMINATION OF QDRO.

The retirement system will consider a QDRO as having been terminated in any of the following situations:

- (1) Upon receipt of a certified copy of a court order terminating the QDRO;
- (2) Upon payment of all amounts provided for in the QDRO;
- (3) When the person to whom the QDRO applies ceases to be an annuitant of the System; or
- (4) Upon the death of the alternate payee or the member.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-13 ALTERNATE PAYEE'S INFORMATION.

An alternate payee is responsible to report to the retirement system in writing each change in his or her name, residence address, and direct deposit information. When a member's retirement allowance or refund subject to a QDRO becomes payable, the retirement system will send notice to the last address of the alternate payee reported to the retirement system that the retirement allowance or refund is payable. Other than sending such notice, the retirement system shall have no duty to take any other action to locate an alternate payee.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.

1700-03-03-14 COST OF LIVING ADJUSTMENTS.

The alternate payee will receive a proportionate share of any cost of living adjustment received by the member. The retirement system will calculate the amount of any adjustment payable to the alternate payee under the QDRO. The amount of any adjustment payable to the alternate payee is the percentage of adjustment due the member multiplied by the alternate payee's monthly retirement allowance as of the date of the adjustment.

Authority: T.C.A. §§ 8-34-313 and 8-36-128. **Administrative History:** Original rule filed March 28, 2016; effective June 26, 2016.